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April 15, 2010

By Hand Delivery

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Re: Docket No. 42110, Seminole Electric Cooperative,  
Inc. v. CSX Transportation, Inc.

Dear Ms. Brown:

Enclosed for filing in the referenced docket on behalf of  
Complainant Seminole Electric Cooperative, Inc. ("SECI") please find the  
following:

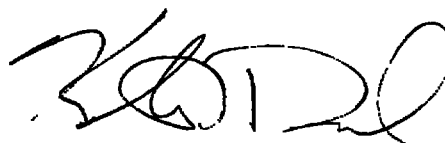
1. The original and twenty (20) copies of the Highly Confidential Version of SECI's Rebuttal Evidence, consisting of one volume of Narrative and one volume of Exhibits.
2. The original and ten (10) copies of the Public Version of SECI's Rebuttal Evidence, also consisting of one volume of Narrative and one volume of Exhibits.
3. Three (3) DVDs, each containing electronic copies of the Highly Confidential Version of the Rebuttal Narrative and Exhibits, as well as the workpapers supporting SECI's Opening Evidence (all of which are submitted in electronic form). The electronic workpapers are designated as Highly Confidential under the protective order entered by the Board in this proceeding.

Cynthia T. Brown  
April 15, 2010  
Page 2

Please be advised that the Rebuttal Narrative and Exhibits contain color images at various locations, including Parts II-B, III-F, and Exhibit III-B-2.

Kindly date stamp the extra copies of this cover letter and the enclosed pleading and return them to our messenger. Thank you for your attention to this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'K. Dowd', with a stylized flourish at the end.

Kelvin J. Dowd  
An Attorney for Complainant

KJD:lad  
Enclosures

cc: Counsel for Defendant CSX Transportation, Inc..

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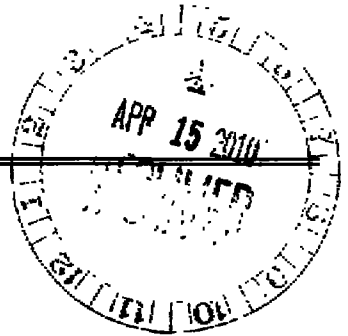
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**PUBLIC VERSION**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

226817



**SEMINOLE ELECTRIC COOPERATIVE,  
INC.**

**Complainant,**

**v.**

**CSX TRANSPORTATION, INC.**

**Defendant.**

**Docket No. 42110**

**REBUTTAL EVIDENCE OF COMPLAINANT  
SEMINOLE ELECTRIC COOPERATIVE, INC.**

**NARRATIVE**

**SEMINOLE ELECTRIC  
COOPERATIVE, INC.**

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**Dated: April 15, 2010**

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## ACRONYMS

The following acronyms are used:

2009 AEO	2009 Annual Energy Outlook April Update Forecast
AAR	Association of American Railroads
AIILF	All-Inclusive Less Fuel Index, published by AAR
ATC	Average Total Cost
CMP	Constrained Market Pricing
CSXI	CSX Intermodal, Inc.
CSXT	CSX Transportation, Inc.
DCF	Discounted Cash Flow
FRA	Federal Railroad Administration
EIA	Energy Information Administration
HDF	On-Highway Diesel Fuel Index
MGA	Monongahela Railway
MMM	Maximum Markup Methodology
NS	Norfolk Southern Railway Company
RCAFA	Rail Cost Adjustment Factor, adjusted for productivity
RCAFU	Rail Cost Adjustment Factor, unadjusted for productivity
r/vc	Revenue-to-Variable Cost
RTC	Rail Traffic Controller Model
SARR	Stand-Alone Railroad
SAC	Stand-Alone Cost
SECI	Seminole Electric Cooperative, Inc
SGS	Seminole Generating Station, located near Palatka, FL
URCS	Uniform Railroad Costing System

## CASE GLOSSARY

The following short form case citations are used:

<i>AEPCO I</i>	<i>Arizona Elec. Power Coop. v. Burlington N. and S.F. Ry. Co. and Union Pac. R.R. Co.</i> , 7 S.T.B. 224 (2003)
<i>AEPCO II</i>	<i>Arizona Elec. Power Coop. v. Burlington N. and S.F. Ry. Co. and Union Pac. R.R. Co.</i> , STB Docket No. 42058 (STB served March 15, 2005).
<i>AEP Texas</i>	<i>AEP Tex. N. Co. v. BNSF Ry.</i> , STB Docket No. 41191 (Sub-No. 1) (STB served September 10, 2007).
<i>APS</i>	<i>Ariz. Pub. Serv. Co. and Pacificorp. v. The Atchison, Topeka and Santa Fe Ry.</i> , 2 S.T.B. 367 (1997)
<i>Coal Rate Guidelines or Guidelines</i>	<i>Coal Rate Guidelines, Nationwide</i> , 1 I.C.C.2d 520 (1985). <i>aff'd sub nom. Consolidated Rail Corp. v. United States</i> , 812 F.2d 1444 (3 <sup>rd</sup> Cir. 1987)
<i>Coal Trading Corp.</i>	<i>Coal Trading Corp. v. The Baltimore &amp; Ohio R.R.</i> , 6 I.C.C.2d 361 (1990)
<i>CP&amp;L</i>	<i>Carolina Power &amp; Light Co. v. Norfolk S. Ry.</i> , 7 S.T.B. 235 (2003)
<i>Duke/CSXT</i>	<i>Duke Energy Corp. v. CSX Transp. Inc.</i> , 7 S.T.B. 402 (2004)
<i>Duke/NS</i>	<i>Duke Energy Corp. v. Norfolk S. Ry.</i> , 7 S.T.B. 89 (2003)
<i>Duke/NS II</i>	<i>Duke Energy Corp. v. Norfolk S. Ry.</i> , Docket No. 42069 (STB served October 20, 2004)
<i>FMC</i>	<i>FMC Wyo. Corp. v. Union Pac. R.R.</i> , 4 S.T.B. 699 (2000)
<i>KCP&amp;L</i>	<i>Kansas City Power &amp; Light Co. v. Union Pac. R.R.</i> , STB Docket No. 42095 (STB served May 19, 2008)
<i>Major Issues</i>	<i>Major Issues in Rail Rate Cases</i> , STB Ex Parte No. 657 (Sub-No. 1) (STB served Oct. 30, 2006)
<i>McCarty Farms</i>	<i>McCarty Farms v. Burlington Northern, Inc.</i> , 2 S.T.B. 460 (1997)

<i>OG&amp;E</i>	<i>Oklahoma Gas &amp; Electric Co. v. Union Pac. R.R.</i> , STB Docket No. 42111 (STB served July 24, 2009)
<i>Otter Tail</i>	<i>Otter Tail Power Co. v. BNSF Ry.</i> , STB Docket No. 42071 (STB served January 27, 2006)
<i>PSCo/Xcel</i>	<i>Public Service Co. of Colorado d/b/a Xcel Energy v. Burlington N. and Santa Fe Ry.</i> , 7 S.T.B. 589 (2004)
<i>PSCo/Xcel II</i>	<i>Public Serv. Co. of Colorado d/b/a Xcel Energy v. Burlington N. and Santa Fe Ry.</i> , STB Docket No. 42057 (STB served Jan. 19, 2005).
<i>TMPA</i>	<i>Texas Mun. Power Agency v. Burlington N. and Santa Fe Ry.</i> , 6 S.T.B. 573 (2003)
<i>WFA/Basin</i>	<i>Western Fuels Ass'n, Inc. and Basin Elec. Power Coop. v. BNSF Ry.</i> , STB Docket No. 42088 (STB served September 10, 2007)
<i>WFA/Basin II</i>	<i>Western Fuels Ass'n, Inc. and Basin Elec. Power Coop. v. BNSF Ry.</i> , STB Docket No. 42088 (STB served February 18, 2009)
<i>Wisconsin P&amp;L</i>	<i>Wisconsin Power and Light Co. v. Union Pac. R.R.</i> , 5 S.T.B. 955 (2001)
<i>West Texas Utilities</i>	<i>West Tex. Utils. Co. v. Burlington N. R.R.</i> , 1 S.T.B. 638 (1996), <i>aff'd sub nom. Burlington N. R.R. v. STB</i> , 114 F.3d 206 (D.C. Cir. 1997)

## **I Counsel's Argument**

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**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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<b>SEMINOLE ELECTRIC COOPERATIVE, INC.</b>	)	
	)	

<b>Complainant,</b>	)	
	)	

<b>v.</b>	)	
	)	

**Docket No. 42110**

<b>CSX TRANSPORTATION, INC.</b>	)	
	)	

<b>Defendant.</b>	)	
	)	

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**PART I**

**COUNSEL’S ARGUMENT AND SUMMARY OF EVIDENCE**

This is the Rebuttal Evidence of Complaint, Seminole Electric Cooperative, Inc. (“SECI”) in this maximum rail coal rate proceeding. Herein, consistent with the Board’s guidelines for the submission of rebuttal evidence,<sup>1</sup> SECI responds to the Reply Evidence submitted by Defendant, CSX Transportation, Inc. (“CSXT”) on January 19, 2010 (hereinafter “CSXT Reply”). In some selected respects, SECI modifies elements of its August 31, 2009 Opening Evidence in direct response to points raised by or new evidence provided with the CSXT Reply. For the most part, however, SECI demonstrates that CSXT’s criticisms, revisions, adjustments and counter-arguments lack support or merit, and should be rejected by the Board.

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<sup>1</sup> See, e.g., *Duke/NS*, 7 S.T.B. at 101.

SECI's Opening Evidence was submitted pursuant to and in accordance with the stand-alone cost ("SAC") constraint of the Constrained Market Pricing ("CMP") model of the Board's *Coal Rate Guidelines*. This Rebuttal likewise conforms to the evidentiary standards set out in the Board's various precedents interpreting and applying the SAC test and CMP methodology. This Rebuttal concludes with a restatement of the SAC analysis as applied to the rates set forth in Tariff CSXT 32531 for the transportation of coal and/or petroleum coke from eight (8) specified origins to the Seminole Generating Station ("SGS") near Palatka, Florida, which are under challenge and at issue in this proceeding. That analysis unequivocally confirms that each of the subject rates exceeds a lawful maximum level under 49 U.S.C. § 10701, and that SECI is entitled both to a prescription of lower, maximum rates pursuant to 49 U.S.C. § 10704 for the period January 1, 2009 through December 31, 2018, and an award of reparations (plus fully compensatory interest) payable by CSXT pursuant to 49 U.S.C. § 11704(b), for rail freight charges assessed by CSXT and paid by SECI in excess of the lawful maxima from and after January 1, 2009.

**A. Background**

Throughout this proceeding, CSXT has sought to inject a slanted account of the parties' prior commercial relationship into the record of the case, apparently in an effort to paint SECI as generally unreasonable or even opportunistic in its interactions with CSXT. SECI has made clear its objection to this tactic, *inter alia*, because a "who struck John?" exchange over how parties ultimately come before the Board for adjudication of a rate dispute has no legitimate place in the regulatory methodologies that



guide the agency's determinations. Obviously, given the requisite investments of time and resources, it is safe to assume that a large railroad and a large utility customer end up in rate litigation before the Board only after extensive efforts at commercial negotiations have proven unsuccessful. In SECI's view, how they came to that point is not a matter for the Board's concern. Unfortunately, CSXT seems to believe otherwise.

SECI has no intention of inter-lacing its Rebuttal Narrative and supporting evidence with the kind of invective, condescension and exaggeration with which CSXT's Reply Narrative is rife. The Board's deliberations will not benefit from more rhetorical "sound and fury, signifying nothing."<sup>2</sup> As CSXT again offers its partisan account of the parties' past dealings, however, SECI responds with an accurate -- and documented -- history.<sup>3</sup>

CSXT recites that between 1984 and 1998, coal moved to SGS via a rail-barge combination.<sup>4</sup> Significantly, however, 100% of that coal was delivered by CSXT (or its predecessor), the only transportation provider (then or now) with access to SGS. In 1991, SECI and CSXT entered into a contract for the destination segment of the move to SGS, but two (2) facts about this arrangement are particularly noteworthy here. First, it reflected a resolution of the parties' differing positions over the maximum reasonable rate under the then-ICC's guidelines; in other words, it was the product of a potential

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<sup>2</sup> Wm. Shakespeare, "Macbeth," Act V, sc. 5.

<sup>3</sup> The facts set forth in this Part I are verified by Mr. Michael Opalinski, SECI's Senior Vice President of Strategic Services. Additional facts that rebut various assertions by CSXT regarding the parties' prior commercial dealings are detailed in Part II-B.

<sup>4</sup> CSXT Reply at I-4.

litigation settlement, not intermodal competitive leverage. Second, an all-rail option was included in the contract, which SECI was required to use for all coal requirements which were not contractually committed to the former water-rail route.

In the late 1990s, SECI and CSXT negotiated a new contract which shifted all of the SGS coal volumes to the all-rail route. As the Board already has noted in this case, these negotiations also took place against the backdrop of potential rate proceedings before the agency.<sup>5</sup> Contrary to CSXT's claims today, however, the rates agreed to in the 1998 contract (CSXT-68681) were neither below market nor "unusually favorable." In fact, as SECI shows in Part II-B, the 1999 rail rates to SGS were simply in line with prevailing CSXT rates for coal movements of comparable length, which points up the uneconomic comparison between all-rail and waterborne transportation even then.<sup>6</sup> The value of those all-rail rates to CSXT was preserved over the ensuing decade, as well. As SECI showed on Opening, {

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While the 1998 contract rates easily kept pace with changes in CSXT's costs, apparently they did not keep pace with CSXT's appetite for increased revenue.

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<sup>5</sup> See Decision served December 22, 2008 at 2.

<sup>6</sup> Indeed, the cost spread between CSXT's then-standard rates and the former barge-rail move was so great that it offset the cost of retiring SECI's former contracts with the multi-modal vendors under the pre-1999 water-rail arrangements.

Incentivized by the financial community<sup>7</sup> and perhaps encouraged by the outcome of earlier rate litigation,<sup>8</sup> CSXT followed a policy of net revenue growth through rate increases on demand inelastic traffic. It was this policy that greeted SECI when discussions opened over a potential successor to Contract 68681.

As has been its mantra before the Board in this proceeding, CSXT's position in negotiations with SECI over a new arrangement to govern post-2008 shipments to SGS was unambiguous: SECI should accept significantly higher rates because they are consistent (on a delivered cost basis) with those accepted by or imposed upon other Florida utilities. If, as was the case, SECI's origin coal costs opened a wider margin as compared to other selected shippers, CSXT's rates would take up the difference. Faced with such a position, SECI exercised its legal rights and requested common carrier rates from CSXT in 2008, so that SECI could assess its alternatives to simply acquiescing to CSXT's terms. Notably, throughout the Summer and early Fall of 2008, a central factor in the parties' discussions was the level of maximum reasonable rates under the Board's *Coal Rate Guidelines*; the notion of SECI being able to divert its coal shipments to an alternative transportation system was never mentioned, other than

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<sup>7</sup> See, e.g., Deseret Morning News, *Back on Track; Railroads are Acquiring Competitive Edge in Shipping*, 2007 WLNR25870512 (July 1, 2007); Coal Trader, *Boosted CSX Infrastructure Spending*, 2007 WLNR 9742190 (May 10, 2007).

<sup>8</sup> See *Duke/CSXT*.

by CSXT near the end of negotiations in the context of potential litigation before the Board.<sup>9</sup>

The rates at issue in this proceeding were set unilaterally by CSXT, based on its determination of “the current market for coal rates.” CSXT Reply at I-6. As shown in Part II-B, this is a “market” that CSXT utterly controls, and over which it asserts a right to claim all economic rents made available by differentials between coal costs and the perceived maximum delivered fuel cost set by Florida power markets. Upon evaluation of the rates in question here, which are each over 300% of the unadjusted system average variable cost of service and average 49 mills per ton-mile for long-haul unit train service, SECI determined that they exceed a maximum reasonable level under the *Coal Rate Guidelines*. This case followed.

**B. Delivered Coal Cost Comparisons Are Irrelevant to the Issue of Rate Reasonableness**

SECI’s position regarding the unreasonableness of the challenged rates is not predicated on a “misapprehension of the market rates for transporting coal...”. CSXT Reply at I-7. It is predicated on the facts that the challenged rates are in excess (in some cases well in excess) of 300% of the *unadjusted system average* CSXT variable costs, and that they fail the test of reasonableness under the *Coal Rate Guidelines*. Throughout this proceeding, CSXT has sought to defend its rates based on its view of the “market”

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<sup>9</sup> CSXT’s “last proposal” to SECI (CSXT Reply at I-6) came couched in correspondence which repeatedly referred to CSXT’s success in the *Duke/CSXT* litigation. It is not surprising that SECI responded by asserting its rights to regulatory protection under 49 U.S.C. § 10701.

for coal transportation into Florida, and alleged comparisons between the delivered cost of coal to SGS under the challenged rates, and the delivered coal costs experienced by other Florida utilities. The claim fails, for at least two reasons.

First, under the *Coal Rate Guidelines* and CMP, the rates paid by other coal shippers (voluntarily or otherwise) have no determinative relevance with respect to the reasonableness of rates charged to a particular captive coal shipper. To be sure, the rail revenues generated by other coal shippers in a SARR's traffic group play a role in the SAC determination, and r/vc ratios applicable to other shippers' traffic factor into execution of the Maximum Markup Methodology (MMM). However, a nominal comparison of a rate under challenge to rates paid by other shippers in a given "market"<sup>10</sup> is not a valid determinant under the Board's coal rate reasonableness standards.

*Cf. WFA/Basin II* at 2.

Second, a comparison of *delivered* coal costs says nothing about the relative standing of rail rates, as a major component of delivered cost is the minemouth price of the coal itself, a component over which CSXT has little or no control. As SECI shows in Part II-B, SECI's origin coal prices {

} which is what causes SECI's

2009 delivered cost to fall in the "mainstream" of the CSXT group. If the focus shifts to the cost component that CSXT *does* control and that is at issue in this case – the rail rate

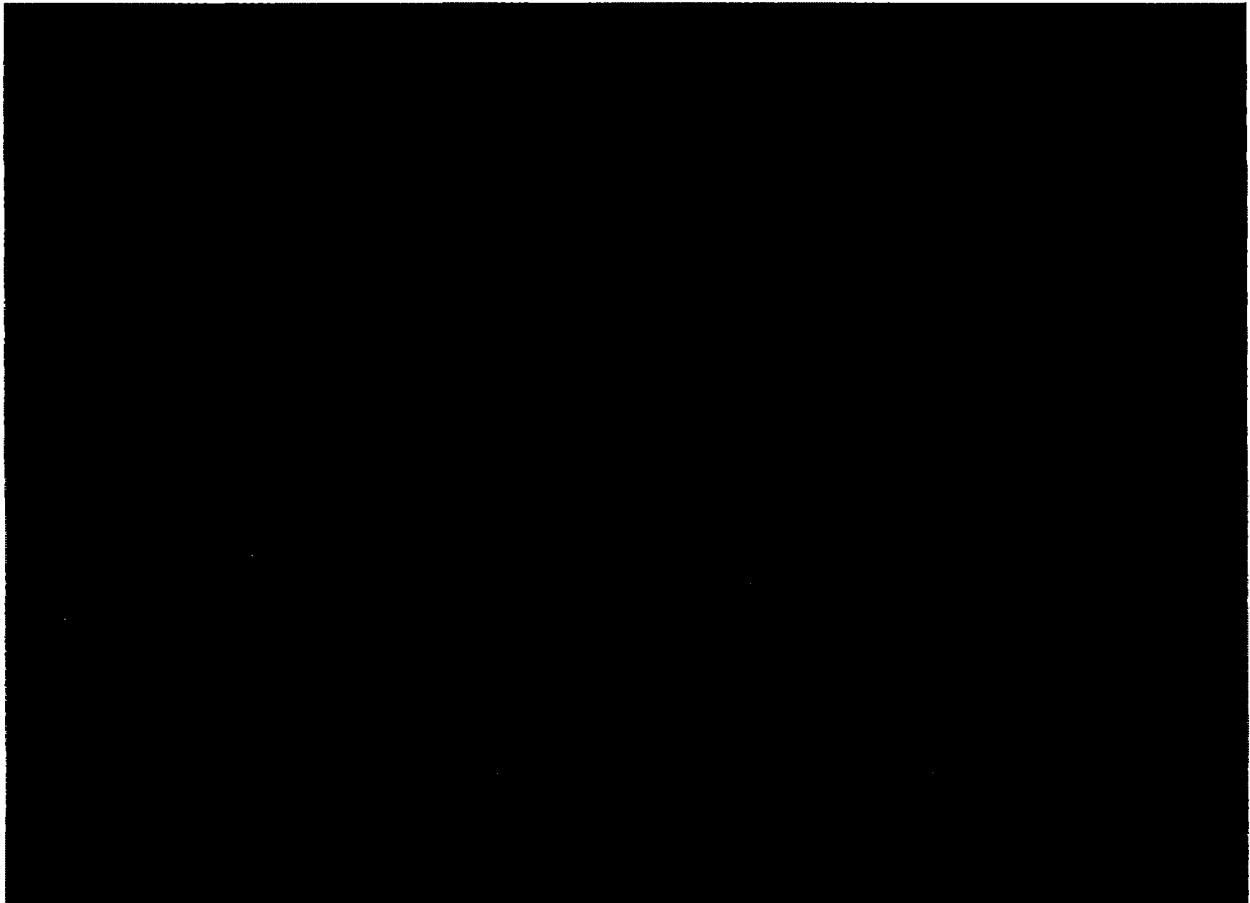
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<sup>10</sup> CSXT keeps focusing on coal movements into Florida, which is hardly a dynamic "market" in light of CSXT's near-complete dominance over rail, coal service into the State.

– SECI’s costs under the issue rates far exceed those of other CSXT utility customers in Florida:

**Table I-1**

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While irrelevant to the question of rate reasonableness, the delivered cost and rail rate comparisons do illuminate CSXT’s market dominance over coal transportation to SGS, as the ability of a firm to take for itself the available economic rents below a given total cost level is a classic indicator of monopoly power.

**C.     The Board Has Jurisdiction Over All  
the Rates at Issue In This Proceeding**

As summarized later in this Part I and demonstrated in detail in Part II, both prongs of the jurisdictional prerequisite of market dominance under 49 U.S.C. § 10707 are met as to all movements covered by SECI's Complaint. It is undisputed that the challenged rates all are well in excess of 180% of the variable cost of service, and SECI's evidence clearly establishes that there is an absence of effective transportation competition for CSXT rail service to SGS. While CSXT advances the claim that SECI could use rail-barge and/or truck-barge service to bypass the railroad altogether,<sup>11</sup> the evidence shows that these asserted "options" are not practically, operationally or economically feasible, and do not represent a meaningful constraint on CSXT's pricing. CSXT's market dominance objection therefore should be overruled.

Separately, CSXT also argues for dismissal of the Complaint as it relates to the Tariff CSXT 32531 rates on movements from the Bailey, PA and Gibcoal, IN mines, and the Port of Charleston, SC. CSXT Reply at I-9. As grounds for this assertion, CSXT states that no traffic has moved from these points "during the Complaint period or the two years preceding the Complaint," and that SECI's projection of future volumes of the issue traffic for SAC purposes does not specify movements from these particular origins. *Id.* Thus, CSXT claims, the Board lacks jurisdiction under 49 U.S.C. § 10704, because the challenged tariff rates from these origins will not be "charged or collected" during the SAC analysis period. CSXT's position is not meritorious and should be rejected.

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<sup>11</sup> CSXT Reply at II-26-44.

As CSXT itself acknowledges, SECI in fact did ship petcoke from Charleston within the two (2) years prior to the filing of the Complaint,<sup>12</sup> and Tariff CSXT 32531 makes no distinction between petcoke and coal -- the same rate applies to either fuel. *See* SECI Opening Exhibit I-1. As to this origin, there could be no “paper rates” issue even if it were relevant here for jurisdictional purposes. Likewise, and contrary to CSXT’s suggestion, the Board’s March 19, 2004 decision in *AEP Texas* does not support the claim that a shipper must “use the transportation service in order to be ‘charged’ the challenged rate.” *Id.* at I-10. The Board’s full ruling in *AEP Texas* was as follows:

In its Complaint, AEP Texas asserts that BNSF’s coal rates are unreasonable for movements originating in the PRB and terminating in Okalunion. BNSF argues that the statutory scheme requires AEP Texas to pay the established common carrier rate in full and, because AEP Texas has not, the Board should dismiss the complaint.

The parties should note that, under 49 U.S.C. 10701(c), a rail carrier is free to establish any common carrier rate it chooses and has the rate freedom to increase its rates without precondition, except for the notice requirement of 49 U.S.C. 11101(c). A shipper may seek a Board determination of the reasonableness of the rates, but it may not withhold payment of a legally established rate. If the Board determines that the rates are unreasonable it can order reparations to make the shipper whole. However, under 49 U.S.C. 11705(a), the only way for a carrier to be made whole, when a shipper does not pay the legally established rate, is to bring a civil action to recover the charges for the transportation or service provided.

BNSF is correct that AEP Texas must pay the existing legally established common carrier rate in full. However, AEP

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<sup>12</sup> CSXT Reply at I-10.



Texas' failure to do so does not mean that there is no basis, in law, on which to review the reasonableness of BNSF's rates.

*Id.* at 2. At most, the *AEP Texas* ruling endorses the proposition that actual payment of a challenged rate is not a prerequisite to Board jurisdiction to adjudicate its reasonableness.<sup>13</sup> Nothing therein speaks to the question whether proof of use of the transportation service subject to a challenged rate is essential to Board jurisdiction over that rate.

CSXT frames its jurisdictional argument around 49 U.S.C. § 10704, wherein the “charged and collected” language appears. However, that provision addresses the Board’s authority to prescribe new rates and practices. It is not the statutory basis for the Board’s jurisdiction to evaluate the reasonableness of *existing* rates, which rests in 49 U.S.C. § 10701 and its companion remedial statute, 49 U.S.C. §§ 11701(a) and (b). *See Georgia-Pacific Corp., Petition for Declaratory Order*, 9 I.C.C. 2d 103, 155 (1992) (“This Commission has the discretion...to decide the issue of rate reasonableness alone or in combination with the prescription of a rate to be followed in the future.”). By its plain terms, Section 11701(b) creates a cause of action by “[a] person...about a violation of this part by a rail carrier providing transportation or service subject to the jurisdiction of the Board under this part.” As with Section 10701, nothing in the statute implies that a “person” must first use the carrier’s service and experience the violation in order to bring the matter of the violation before the Board.

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<sup>13</sup> *Cf.* 49 U.S.C. § 11701(b) (“[T]he Board may not dismiss a complaint made against a rail carrier providing transportation subject to the jurisdiction of the Board under this part because of the absence of direct damage to the complainant.”).

CSXT attaches great weight to the coal volume forecast used in SECI's Opening Evidence to project future volumes for SGS, because it does not specify volumes from Bailey, Gibcoal and Charleston. CSXT Reply at I-11-12. As SECI demonstrated in Opening, however, only approximately 2.7 million of the total of about 4 million tons of solid fuel used at SGS annually is purchased from Alliance under longstanding contract arrangements. The balance (at least 1.3 million tons) is procured annually through one or more short-term spot purchase arrangements. SECI Opening at I-6. Alliance, which owns the Gibcoal reserves, regularly participates in SECI's spot coal solicitations, as do the operators of the Bailey Mine and coal and petcoke importers whose products can move through Charleston. The SECI forecast is an accurate projection of annual aggregate volumes, but it cannot serve as a binding predictor of which suppliers will secure SECI's spot coal business. Thus, the volumes shown in SECI's Opening Exhibit III-A-2 (the source for CSXT's Table 1-B) indicate volumes for the two (2) principal long-term source mines (Dotiki and Pattiki), and for the mines to which SECI had awarded spot tonnage for 2009 and (in the case of Consol 95) 2010. Subsequent years show changes in aggregate volumes in accordance with SECI's internal forecast of long-term generation and fuel requirements. However, as it is not possible to predict which specific origins or operators will obtain future spot business, the identified mines are unchanged in the Opening Exhibit. This does not mean that there is no expectation that coal will be procured from other origins; to the contrary, SECI anticipates that it might move coal from all origins covered by CSXT 32531 over the

course of the SAC study period. Which ones, and when, simply cannot be predicted with certainty in advance.

Contrary to CSXT's characterization, the Board's decision on reconsideration in *TMPA*<sup>14</sup> is squarely on point on this issue. There, as here, the complaint challenged rates applicable to a number of different mines, all of which were potential sources for the complainant's future coal supplies. In its initial decision in 2003, the Board only mentioned (but did not specifically limit its findings to) the two mines that TMPA had moved traffic from during the time period covered by the evidentiary record. TMPA petitioned for reconsideration to apply the prescribed rate to all of the PRB mines listed in its complaint. In granting the petition, the Board clarified that "[i]n fact, it was the Board's intention that the rate prescription extend to any mines from which traffic might move, so long as those mines were covered by both the complaint and the SAC analysis." *Id.* at 23. The Board continued:

The railroad is not disadvantaged by the rate prescription extending to all of the mines that were embraced in the complaint and the SAC analysis. The railroad is protected by the terms of the prescription itself, which assures that the prescribed rate cannot fall below the 180% R/VC floor for any movement in any year. Indeed, by their nature rate prescriptions apply to future movements, before the information necessary to calculate the variable costs of those future movements is known.

*Id.* at 24.

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<sup>14</sup> Decision served September 27, 2004.

The ruling in *TMPA* was not predicated on formal forecasts. Rather, the keys to the decision were that both the complaint and the evidence covered the mines in question, and that the mines were potential sources of coal for the complainant. All three of those points match the circumstances of this case.

Finally, the implication of CSXT's argument here – that the Board can or should only prescribe rates for mines from which a complainant proves that it will ship coal over the SAC period – was raised and specifically rejected in *TMPA*. In response to BNSF's objection to consideration of the reasonableness of rates from complaint origins from which *TMPA* had not yet moved traffic (CSXT's objection here), the Board invoked considerations of administrative efficiency and sound public policy:

[W]e are persuaded that the better policy is for a rate prescription to be self-effectuating where a mine is embraced in both the original complaint and the SAC evidence. There is no sound legal or public policy reason why *TMPA* should be required to re-litigate its rate complaint, in whole or in part, to obtain the benefit of the rate prescription when it shifts traffic from one of the mines covered by its rate complaint to another mine covered by that same complaint.

*Id.* at 24.<sup>15</sup>

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<sup>15</sup> CSXT similarly misconstrues the Board's December 31, 2001 *AEPCO* decision (CSXT Reply at I-12), which properly read does not mandate shipment of traffic in order to confer jurisdiction. Indeed, in an earlier decision in the same docket, served May 8, 2001, the Board directed BNSF (over the carrier's objection) to establish rates that all parties knew would then be challenged on the ground that it had "no basis for finding that *AEPCO* will not use the rates it seeks here in the foreseeable future." *Id.* The same conclusion applies here.

The Board has jurisdiction to adjudicate the reasonableness of the rates from all origins named in Tariff CSXT 32531.

## **SUMMARY OF REBUTTAL EVIDENCE**

### **I. PREFACE**

SECI's evidence firmly establishes that the Board has jurisdiction over the common carrier rates at issue, and that each of those rates substantially exceeds a lawful, reasonable maximum. SECI shows that all of the challenged rates exceed 180% of variable costs, and that CSXT faces no effective transportation competition that could exert any meaningful discipline on its pricing. On the question of SAC and its proper application as a rate constraint, SECI's Rebuttal Evidence adopts some adjustments proposed by CSXT; demonstrates that other of CSXT's criticisms of SECI's Opening Evidence are unfounded and that such Opening Evidence is feasible and supported; and in certain instances makes reasonable refinements in direct response to issues raised by CSXT. *See Duke/NS*, 7 S.T.B at 100-101. The end result of this comprehensive Rebuttal is a restatement of SAC which conclusively shows that the challenged rates exceed maximum reasonable levels.

Below, SECI briefly summarizes the evidence presented in Parts II and III of this Rebuttal, in a format that generally responds to the principal claims advanced by CSXT.

## **II. MARKET DOMINANCE**

### **A. Quantitative Market Dominance**

CSXT concedes that the rates at issue all exceed 180% of the unadjusted system average variable cost of service. Nevertheless, CSXT takes issue with four (4) aspects of SECI's variable cost calculations. Other than the first – an inadvertent discrepancy in mileages from certain origins, which is corrected in SECI's Rebuttal restatement – CSXT's critiques and accompanying adjustments should be rejected.

CSXT may "treat" movements from the Pattiki Mine at Epworth, IL as interline movements with the Evansville Western Railroad ("EVWR")<sup>16</sup> for reporting purposes, but the facts are that (1) CSXT used to provide the identical origin service before spinning the branch to Epworth off to EVWR; (2) CSXT controls all pricing from Epworth and pays EVWR a fixed fee, not an interline division; (3) service from Epworth is provided using CSXT locomotives and SECI railcars, with EVWR providing only train crews for a "run through" movement; and (4) CSXT retains an ownership interest in EVWR itself, through its wholly owned subsidiary. As SECI shows in Part II-A, in practical terms the movement from Epworth is as local to CSXT as that from Dotiki, and should be treated accordingly for variable cost purposes.<sup>17</sup>

For shipments from issue origins that did not initiate shipments in 2008, CSXT insists that the most accurate measure of railcar lading weights is an average of

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<sup>16</sup> CSXT Reply at I-15.

<sup>17</sup> Notably, CSXT does not treat EVWR as a separate carrier for purposes of indexing base period variable costs to current values.

*other* shippers' movements from those origins, even though those shipments took place in equipment quite different from the 120-ton aluminum railcars supplied by SECI for shipments to SGS. CSXT claims that the best barometer of lading weight is the individual loading practices and capabilities of the mines.<sup>18</sup> However, all seven (7) of the mine origins at issue here are 4-hour batch or belt system unit train loadouts, with virtually identical loading capabilities. Under these circumstances, the primary determinant of lading weight will be railcar capacity, which is the approach followed by SECI.

Finally, SECI properly calculates variable cost and r/vc ratios separately for movements in private (SECI) and carrier (CSXT) railcars, because while virtually all shipments take place in SECI cars, the tariff in question applies equally to shipments in both types of equipment. CSXT advocates ignoring the actual operating parameters of the movement (car ownership is one of the nine (9) inputs to unadjusted URCS variable costs), and basing costs on the assumption that movements take place in CSXT cars, on the grounds that the tariff prescribes an allowance for private car movements in lieu of a separate private car rate. Naturally, this would inflate variable costs for SGS shipments. However, the Board specifically rejected attaching any significance to this distinction in *Major Issues*, recognizing that it could be used by railroads as a tactic to manipulate the variable cost calculation. *Id* at 58-59. As explained in detail in Part II-A, tariff

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<sup>18</sup> CSXT Reply at I-15.

shipments under the challenged rates take place in private cars, and should be costed accordingly.<sup>19</sup>

**B. Qualitative Market Dominance**

CSXT advances the claim that SECI enjoys “effective competition” for CSXT rail service from the issue origins in the form of an eight-step rail/truck-barge-vessel-barge-conveyor chain from Illinois Basin mines, and a five-step version of a similar chain from Northern Appalachia mines. Despite the facts that CSXT has delivered virtually every ton of solid fuel that has been used at SGS since the 1980s, and none of the extensive infrastructure needed to support its alleged “alternative” actually exists, CSXT insists that SECI could, if it chose, invest hundreds of millions of dollars to create the option, and that this possibility is enough to constrain CSXT’s pricing. As demonstrated in Part II-B, SGS is qualitatively captive to CSXT.

The only substantive evidence that CSXT offers in support of its claim<sup>20</sup> is a report by Energy Ventures Analysis, Inc. (“EVA”), a consulting firm regularly retained by CSXT to assist in litigation against its utility customers. In this case, the EVA consultants present a plan and cost estimates for the construction of a coal barge

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<sup>19</sup> CSXT sets car ownership to “private” in the URCS model used for development of its MMM ratios, further exposing its position in the context of quantitative market dominance as an artifice to artificially inflate variable costs.

<sup>20</sup> CSXT makes repeated references to a video that it included as its Exhibit II-B-1. However, an unverified propaganda piece that selectively omits key, adverse facts (*e.g.* the lack of barge transfer facilities at Jacksonville, the residences surrounding the spot near SGS where SECI supposedly could construct a major industrial dock and conveyor system, etc.) does not constitute substantive evidence.



unloading facility near SGS, and the acquisition and operation of ocean vessels, river barges, transloading gear, and myriad other assets which presently are not available for use, that they assert constitute a real and effective competitive alternative. As SECI shows in its evidence, however, EVA previously testified before the Florida Public Service Commission on behalf of CSXT in a case against *another* utility customer that SGS was captive to CSXT, and “does not enjoy rail/barge competition.” Further, its report in this proceeding is fraught with errors and omissions, including (but by no means limited to) the following:

- \* EVA assumes that river barges could be loaded with coal in the open ocean, even though no such operation ever has been attempted, and the barges likely would sink.
- \* EVA assumes unreasonably fast loading, transfer and transit times, which when corrected show that its plan does not provide nearly enough equipment capacity for the volumes involved.
- \* EVA assumes that a large, 2-crane, 800 foot industrial dock and unloading facility can be built in the middle of a residential area and frequent manatee habitat.
- \* EVA’s plan relies on several counter-intuitive and/or fantastic assumptions, such as CSXT agreeing to lower its tariff rates to facilitate a shorter haul to a coastal port in lieu of an all-rail move to SGS, or barges and vessels that operate perpetually on-schedule and in perfect weather, with no delays or adverse contingencies of any kind.

SECI’s experts demonstrate that realistically, the EVA scheme simply wouldn’t work.<sup>21</sup> Even if all the disqualifying obstacles and other defects are assumed

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<sup>21</sup> SECI also explains how CSXT and EVA mischaracterize and distort the contents of a 2003 preliminary draft report by Bulk Terminals Group, LLC (“BTG”) that initially looked at some of the issues and components associated with hypothetical waterborne coal transportation to SGS. For various practical, environmental and other

away, however, they also show that coal could not be delivered in the manner described for less than \$51.00 per ton, a cost which clearly exceeds a level that could act as an effective constraint on CSXT's rates.

In prior cases where railroad defendants have claimed that a complainant could build its way to competition, the Board has pointed to the capital cost that would be incurred as evidence of a lack of feasibility. For example, in *TMPA*, the agency found that the prospect of a \$49 million investment that would require a rate discount of \$3.21 per ton to amortize did not provide "sufficient competitive pressure to effectively discipline" the defendant's rates. *Id.*, 6 S.T.B. at 584. *See also West Texas Utilities*, 1 S.T.B. at 651 (\$62 million construction cost found to render a build-out ineffective as a source of competitive leverage). In this case, even using EVA's understated estimates, SECI would face capital investments of more than \$300 million in order to implement EVA's waterborne "option," which when combined with the other associated costs conservatively translates into rates \$6.00-\$10.00 per ton *higher* than the issue rates.<sup>22</sup> The allegation of effective intermodal competition fails at every level.

Likewise, CSXT's claim that rail service from Charleston<sup>23</sup> faces effective competition in the form of alternative deliveries from Jacksonville fails. While imported

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reasons, such a system was not considered feasible and the BTG project was terminated. This explanation is provided by BTG itself.

<sup>22</sup> *See* Exhibit II-B-2, Exh. HW-1.

<sup>23</sup> CSXT seems enamored of the point that Charleston is a port, and not a coal mine. While this is obviously true, it is basically irrelevant. Charleston is a named origin

coal or petcoke could be tendered at the Port of Jacksonville, it still has to move south to SGS. Barge service is not practical, for the same reasons that it is not feasible for SECI's coal volumes. Alternatively, for truck transportation to be considered, there must be ground storage capacity available, as even a small ocean barge cannot wait at berth while petcoke is unloaded 25 tons at a time into trucks. CSXT and EVA allege that such capacity exists at Jacksonville, but the only facility that they have identified cannot stockpile coal and petcoke, and cannot handle it for third parties. Before the matter of traffic impacts and other factors affecting the economics of truck transport<sup>24</sup> even are considered, CSXT has failed to show that such an operation can be mounted at Jacksonville.

SGS is captive to CSXT rail service, and the Board has jurisdiction over the subject matter of SECI's Complaint.

### **III. THE CHALLENGED RATES ARE UNREASONABLY HIGH**

It is undisputed that the rates at issue in this proceeding, which apply to long-haul unit train coal movements that are acknowledged to be among the most efficient segments of traffic handled by rail, average nearly 50 mills per ton-mile. CSXT,

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in the subject tariff, which tariff establishes a rate that properly is under challenge here (*see* I-9-14, *supra*).

<sup>24</sup> It also should be noted that CSXT only alleges that truck transportation is effective for approximately 350,000 tons of coal or petcoke annually. Given SGS's total solid fuel requirements, even if this volume could be diverted away from CSXT it would have no disciplinary effect on the carrier's pricing. *See Metropolitan Edison v. Council*, 5 I.C.C. 2d 385, 410 (1989).

however, insists that “the challenged rates are well below maximum reasonable levels.” CSXT Reply at I-44.<sup>25</sup> Not surprisingly, the parties differ significantly on issues related to the proper calculation of stand alone costs for the subject transportation.

In this Rebuttal, SECI responds comprehensively and in detail to the criticisms of and proposed adjustments to SECI’s Opening Evidence on SAC which are advanced by CSXT in its Reply Evidence. In those instances where SECI concurs with a proposed adjustment, that adjustment is reflected in SECI’s Rebuttal restatement. As to CSXT’s myriad other challenges, however, SECI demonstrates why they lack merit and/or foundation, and should be rejected. As on Opening, the results of a proper SAC evaluation as conducted and explained by SECI in this Rebuttal show that the challenged rates substantially exceed maximum reasonable levels, and that both prescriptive relief and an order of reparations should be granted by the Board.

Consistent with applicable Board guidelines, SECI presented its complete case-in-chief in its Opening Evidence,<sup>26</sup> and has fulfilled its responsibility for designing the SFRR and “supporting the feasibility of all components of its design and cost estimates.”<sup>27</sup> SECI submits that this will be even more apparent upon review of the evidence in Part III of this Rebuttal, which is briefly summarized in the following

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<sup>25</sup> CSXT states this twice in the same short paragraph, so the carrier’s emphasis is clear.

<sup>26</sup> *General Procedures for Presenting Evidence in Stand-Alone Cost Rate Cases*, 5 S.T.B. 441, 445 (2001).

<sup>27</sup> *FMC*, 4 S.T.B. at 723.

sections of this Part I. Two (2) points specifically highlighted by CSXT in its own summary, however,<sup>28</sup> warrant preliminary comment here.

First, as detailed in Part III-C and Exhibit I-1, severe limitations on the usability of traffic, car event and train movement data, and essential supporting information produced by CSXT (caused both by the timing of production and the data itself), made it impossible to actually model the complete operations of the general freight trains that would be handled by the SFRR. While CSXT disputes this, the carrier's own experts were unable to accomplish the task either, and instead resorted to inventing a sequence of operations that bear no relation to the actual movements of the subject trains in the real world. In order to accommodate these limitations in the context of the SAC analysis, which quintessentially is a *cost* determination, SECI developed a methodology to account for the costs associated with all operations conducted by the general freight trains in the SFRR traffic group. As shown in Part III-C, SECI tested its methodology against the results of an actual modeling of several trains for which the CSXT-produced traffic and movement data was sufficient, which test showed that SECI's cost methodology is conservative (*i.e.*, the results favor CSXT).

Second, as also discussed in detail in Part III-C, there are many non-coal trains that are interchanged from CSXT to the SFRR which include carloads of traffic that are not part of the selected SFRR traffic group. To simplify operations and avoid disruptions to the normal movement of these carloads in the real world, the SFRR

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<sup>28</sup> CSXT Reply at I-22.

continues to handle that traffic over its system, for eventual interchange back to CSXT (in the case of overhead movements). Since the traffic is not “SFRR traffic,” SECI does not claim any revenue from those carloads. Instead, the SFRR receives a linehaul credit to compensate it for the costs incurred in handling the traffic. In its Reply, CSXT argues that SECI failed “to present any evidence that CSXT would even consider - let alone accept - any such arrangement...”. This simply is not true. CSXT *has* accepted this type of an arrangement: it is set out in an agreement between CSXT and its affiliate CSX Intermodal, for the purpose of addressing the same circumstance in the real world; *i.e.*, one party’s revenue traffic ends up on the other party’s revenue train. The linehaul credit that the SFRR receives is the same credit prescribed in the CSXT-CSXI agreement.

Taken together, SECI’s Opening and Rebuttal SAC presentations represent the better evidence of record.

**A. Traffic and Revenues**

It is true that CSXT offers “very substantial changes”<sup>29</sup> to SECI’s Opening Evidence on SFRR traffic and revenues. However, as shown in Part III-A, CSXT’s allegations of “significant flaws, errors, and violations of SAC rules”<sup>30</sup> in SECI’s presentation are wholly unfounded, and CSXT’s proposed, significant changes to the SFRR traffic group -- all of which are designed simply to reduce SFRR revenues -- should be rejected.

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<sup>29</sup> CSXT Reply at I-24.

<sup>30</sup> *Id.*

First, SECI did not engage in any deliberate external re-routing of cross-over traffic. Of the 3,201 separate movements in the base SFRR traffic group, CSXT argues that 183 (less than 6%) do not use the SFRR-designed route in the real world. SECI closely re-examined these 183 moves, however, and as shown in Part III-A, 173 of them *do* use the SFRR route in actuality. Based on information supplied by CSXT with its Reply Evidence, SECI determined that 57 of those 173 movements used the same route identified in SECI's Opening Evidence. Of the remainder, 51 moved over a shorter portion of the SFRR, and 52 moved over a longer portion. SECI adjusted these movements' mileages in its Rebuttal restatement. The 10 movements (0.3% of the total) which CSXT's Reply data showed do not actually move over the SFRR route have been removed.

Second, SECI followed established Board precedent both in its coal forecasting procedures and in aggregating coal origins by EIA production region for forecasting purposes. What CSXT here refers to as "overwhelming evidence" of the inaccuracy of its own forecast<sup>31</sup> in actuality were self-serving communications from counsel that were not accompanied by any supporting traffic data. Indeed, CSXT still has not produced actual data for 2Q09 through 4Q09, which renders its Reply coal volumes unreliable.<sup>32</sup> Likewise, CSXT's characterization of the Board's ruling in *CP&L* as an *ad hoc* remedy for a discovery dispute finds no support in the decision itself. To the

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<sup>31</sup> CSXT Reply at I-25.

<sup>32</sup> On Rebuttal, SECI uses EIA's April 2009 Annual Energy Outlook Update forecast to project 2009 coal volumes.

contrary, the regional aggregation rule adopted in that case was deemed essential to the complementary goals of reflecting constantly shifting coal purchase patterns among Eastern coal shippers, and making “the SAC test...workable” in the East. *CP&L*, 7 S.T.B. at 250.

Third, SECI’s forecast of future issue traffic volumes is based on a long-term Fuel Supply Plan developed for purposes independent of litigation, and is reasonable. The significant increase in shipments between 2009 and 2010<sup>33</sup> is a direct consequence of extensive and unexpected generating unit outages in 2009, which reduced coal consumption at SGS during that year by over 1.1 million tons from previously expected levels.<sup>34</sup>

Fourth, SECI correctly applied CSXT’s 2009 forecasts for general freight and intermodal traffic, reflecting declines as well as projected increases. The few, minor double-counts of traffic that were identified by CSXT have been removed from the Rebuttal restatement.

Finally, while SECI makes three (3) specific adjustments to its approach to projecting rate and revenue growth for the SFRR (including correction of an inadvertent error concerning issue traffic revenues), CSX’s larger criticisms of SECI’s revenue forecast evidence are shown herein to be without merit, as SECI’s adjusted revenue

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<sup>33</sup> CSXT Reply at I-26.

<sup>34</sup> CSXT claims “compelling evidence” of various events which it says will lead to a decline in coal-fired generation at SGS in the future (*id.*), but it offers no details or documentation.



projections are supported by established Board precedents and CSXT's own data and documents.

The understatements of SFRR traffic and revenues advanced by CSXT in its Reply Evidence are the product of errors, inconsistencies, unfounded assumptions, and positions which in several cases run directly contrary to Board precedent. SECI's Rebuttal restatement shows an adjustment in SFRR revenues downward by \$68.1 million in 2009, with similar adjustments in the remaining years of the DCF period, and represents the better evidence on the instant record.

**B. Stand-Alone Railroad System**

As shown in Part III-B, the parties agree on the SFRR's route, branch lines, route miles and mainline track miles, with one exception. The exception is that CSXT proposes to have the SFRR construct, and pay one-half the cost of constructing, 135.12 route miles (and 157.28 track miles) of the "MGA lines" in West Virginia/ Pennsylvania, which SFRR trains use to reach certain origin coal mines formerly served by the Monongahela Railway. These lines were acquired by NS as part of the 1998 Conrail control transaction, subject to a NS/CSXT joint-use arrangement pursuant to which NS moves CSXT trains between the mines and CSXT's Newell yard near Brownsville, PA, WV, using NS crews. In return, CSXT pays the functional equivalent of a trackage rights fee.<sup>35</sup>

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<sup>35</sup> The terms of CSXT's (and thus SFRR's) usage of the MGA lines is set forth in the Monongahela Usage Agreement ("MGA Agreement") between NS and CSXT. In addition to the operating fee, the agreement provides for CSXT to pay one-half the cost

The arrangement between NS and CSXT (and thus the SFRR, which steps into CSXT's shoes under the MGA Agreement) is described in detail at III-B-3-7. CSXT has failed to demonstrate why the SFRR should pay for half the cost of constructing the MGA lines. Nothing in the MGA Agreement or other agreements implementing the Conrail control transaction required CSXT to bear any portion of that cost or NS's cost of acquiring these lines, and CSXT has presented no evidence that it actually bore any portion of the acquisition cost. CSXT's joint use arrangement with NS is similar to a trackage rights arrangement with a third party carrier – a situation in which the Board has always permitted a SARR to take advantage of the incumbent's cost-sharing arrangements rather than having to construct the associated lines. *See, e.g., WP&L*, 5 S.T.B. at 1006, 1014; *PSCo/Xcel*, 7 S.T.B. at 628, 665; *AEPCO I*, 7 S.T.B. at 228.

The parties also continue to disagree on the track miles for ancillary facilities (interchanges, yards and customer-access tracks).<sup>36</sup> As shown in Part III-B-2, on Rebuttal SECI has added several new interchanges, trackage for yards and terminals used to originate or terminate intermodal and Transflo (bulk railcar-to-truck) traffic, and customer-access trackage. The most significant remaining difference between the parties is that CSXT proposes to add approximately 125 miles of tracks for “regional and local” yards used for hypothetical switching of non-coal traffic under CSXT's new operating plan for the SFRR. As explained in the next section, CSXT's operating plan must be

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of agreed capital improvements to the MGA lines – that is, capital costs incurred after CSXT and NS implemented CSXT's joint use rights. *See* III-B-4-5, *infra*.

<sup>36</sup> The remaining track-mile differences are summarized in Table III-B-2 at III-B-28, *infra*.

rejected because it does not meet the SFRR customers' transportation service requirements. This requires rejection of the additional yards proposed by CSXT, which are not needed under SECI's operating plan.

**C. Operating Plan**

As noted *supra*, the SFRR's traffic group includes a significant volume of cross-over traffic, with a large number of carloads of general freight (merchandise) traffic that move in less-than-trainload quantities. To avoid having to switch cars out of trains at the on-SARR interchange point, thus imposing additional switching and facility costs on CSXT and other connecting carriers. SECI's operating plan calls for the SFRR to move trains containing a mixture of cars containing SFRR traffic and non-SFRR traffic intact from the interchange point, either to a local destination or to an off-SARR interchange point. The principal difference between the parties with respect to the SFRR's operating plan (which also drives differences with respect to the SFRR's yards) is the extent to which SECI could and should have modeled switching activity that occurs while these trains are on the SFRR system.

The differences between the parties' operating plans are described in detail in Part III-C-1. SECI's operating plan involves the movement of intact trains of non-coal traffic between the on-SARR point (*i.e.*, an interchange with CSXT) and the train's local destination or off-SARR point. Since the base-year (2008) trains carry both SFRR and non-SFRR cars, the SFRR moves the entire train, as received, from the on-SARR point. SECI recognizes that in the real world many of these trains undergo intermediate or local switching activity while on the lines replicated by the SFRR, since they contain cars

destined to different points, but significant limitations of and problems with the CSXT car event and train movement data produced in discovery prevented SECI from determining exactly what switching activity occurred and where it occurred, and thus precluded modeling this activity in the RTC Model simulation of the SFRR's peak-period operations.<sup>37</sup>

Accordingly, SECI included an intermediate and yard/local switch cost additive in the SFRR's annual operating expenses for each on-SARR switching occurrence that could be identified from CSXT's data, as a surrogate for the time and cost of actually performing such switching. On Reply, CSXT claimed that these cost surrogates were improper and that SECI should have accounted for the actual switching activities in its operating plan and RTC Model simulation.<sup>38</sup> On Rebuttal, SECI conducted a test of several sample SFRR movements where on-SARR switching activity could be identified from CSXT's car event and train movement data, and demonstrated that the switching cost surrogates used on Opening actually overstate the cost of performing the underlying operations. *See* III-C-9-20, *infra*.

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<sup>37</sup> The problems that SECI encountered with the CSXT car event and train movement data – many of which continue, notwithstanding CSXT's claims to the contrary in its Reply Evidence – are described in detail in SECI's Rebuttal Exhibit I-1.

<sup>38</sup> *See, e.g.*, CSXT Reply at III-C-4-5. Notwithstanding CSXT's objections, CSXT itself did not do what it argued SECI should have done – rather, it created entirely new hypothetical blocks of cars and SFRR trains in which to move them. This is a tacit admission that CSXT's own experts could not use the car event and train movement data to replicate the real-world operation of the trains carrying SFRR non-coal traffic on lines replicated by the SFRR system.

SECI also conducted a simulation of the SFRR's operations during the peak period of its peak traffic year using the Board-approved RTC Model, to demonstrate the feasibility of the SFRR's operating plan.<sup>39</sup> The RTC simulation demonstrated that the SFRR's average train transit times between various on-SARR and off-SARR locations are consistent with the real-world CSXT transit times between these same points in the base year. Most of the SFRR's non-coal traffic is cross-over traffic, and a large percentage is overhead traffic moved in conjunction with the residual CSXT. Given the direct linkage between the real-world trains arriving at the on-SARR interchange locations and the real-world trains departing from the off-SARR interchange locations, the Board can verify from SECI's RTC-Model demonstration that the SFRR moves its trains in accordance with its customers' transportation service requirements. This is an important confirmation of the adequacy of the SFRR operating plan. *See Duke/NS*, 7 S.T.B. at 99, 117; *Duke/CSXT*, 7 S.T.B. at 427; *AEP Texas* at 16; *WFA/Basin* at 15.

The problems that preclude the Board's acceptance of CSXT's operating plan are described in detail at III-C-20-29, *infra*. In summary, CSXT itself did not do what it accuses SECI of failing to do – CSXT's operating plan does not reflect (and CSXT did not model) the operation of the real-world trains carrying the SFRR's non-coal traffic over the replicated CSXT lines. Rather, CSXT's operating plan erects a wall around the SFRR by treating the cars arriving at the on-SARR interchange points in

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<sup>39</sup> In its Reply Evidence, CSXT criticized several of SECI's track and operating inputs to the RTC Model. On Rebuttal, SECI corrected these inputs where warranted and re-ran the Model, with similar results to those produced by the Opening RTC simulation. *See* III-C-42-60, *infra*.

complete isolation from the trains on which they arrived, without any consideration of the actual operation of those trains on the lines replicated by the SFRR system.<sup>40</sup> CSXT's operating plan then creates hypothetical new blocks of cars, hypothetical new trains on which to move them over various parts of the SFRR system, and hypothetical new yards to accommodate the new blocks and new trains. Because there is no time link between the SFRR's trains and the CSXT trains that move the SFRR's non-coal traffic to the on-SARR point (or from the off-SARR point), there is no way to determine whether CSXT's operating plan enables the SFRR to meet its customers' transportation requirements by moving their traffic in the same time frame in which it moves in the real world.

CSXT's operating plan thus runs afoul of consistent Board precedent holding that it is improper to "assume changed levels of service from those currently offered. . . unless [the proponent] presents evidence showing that the affected shippers, connecting carriers and receivers would not object." *PSCo/Xcel*, 7 S.T.B. at 610; *see also West Texas Utilities*, 1 S.T.B. at 667. The Board has consistently rejected SARR operating plans propounded by complainants in SAC cases that altered the service the affected shippers would receive without showing that it would be acceptable to them. *Duke/NS*, 7 S.T.B. at 117-121; *Duke/CSXT*, 7 S.T.B. at 427-428. Moreover, the Board has accepted an entirely new operating plan proposed in a defendant's reply evidence

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<sup>40</sup> In this regard, CSXT even went so far as to change the blocking of general freight trains *before* they arrived at the on-SARR point, so that the blocks would be removed from the trains when they arrived at the on-SARR location rather than when the train arrived at its real-world destination elsewhere on the SFRR system. *See* III-C-23-24. CSXT's operating plan does not explain what happens to these trains after these blocks are removed.

*only* where the complainant's operating plan provided service to the SARR's customers that was different from the service provided by the incumbent, thus making the complainant's plan unworkable, and leaving the Board no alternative. *Duke/NS*, 7 S.T.B. at 121; *Duke/NS II* at 11.

In this case, it is CSXT's operating plan that is unworkable and must be rejected, because it calls for new service and new operations that are significantly different from those provided by CSXT with respect to the cars and trains carrying SFRR traffic. SECI's operating plan does not suffer from this infirmity, and therefore should be accepted.

**D. Operating Expenses**

SECI's calculation of the SFRR's annual operating expenses is based on its operating plan, as well as the train transit times resulting from its RTC Model simulation of the SFRR's peak-period operations. CSXT proposes to nearly double the SFRR's annual operating expenses as calculated by SECI. The increase stems largely from the complicated new intermediate and local switching operations proposed in CSXT's new operating plan, which require large numbers of additional switch locomotives and T&E personnel, as well as 13 additional yards. CSXT also proposes expanded operating personnel to supervise the new operations (and each other), as well as layer upon layer of new general and administrative ("G&A") and maintenance-of-way ("MOW") personnel.

To the extent that CSXT's proposed increases in the SFRR's operating expenses are a function of its new operating plan and related new yard

facilities/operations, they must be rejected for the same reason that CSXT's operating plan must be rejected, as described above.

SECI responds in detail to CSXT's evidence on the SFRR's operating expenses in Part III-D, and briefly summarizes the salient points here. First, to the extent that operating expenses are derived from the output of the parties' RTC Model simulations, SECI's Rebuttal simulation should be accepted in lieu of CSXT's Reply simulation because the former is based on the operation of trains that correspond to the real-world trains carrying SFRR traffic in the base year (2008).

Second, SECI's methodology for using the RTC Model output (in conjunction with the "MultiRail" model<sup>41</sup>) to develop annual operating statistics is consistent with recent Board precedent, while CSXT's is not. SECI calculated annual statistics by applying average train transit times for the peak week from the RTC Model to all trains moving over the SFRR during the base year, thereby eliminating the risk of over- or understating the annual statistics. CSXT's approach, in contrast, developed peak-day operating statistics and then multiplied them by 365 days to determine annual

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<sup>41</sup> CSXT did not include the MultiRail program or associated input files with the workpapers accompanying its Reply Evidence, and did not provide the program or input files to SECI until March 17, 2010 (less than a month before the due date for Rebuttal Evidence). Given the limited time available to evaluate CSXT's use of the program, SECI's experts were able only to confirm that CSXT used it to help create new, hypothetical blocks of cars and trains in which to move them. CSXT's failure to provide SECI with the MultiRail program and associated inputs in a timely manner provides another ground for the Board's rejection of CSXT's operating plan and associated operating-expense calculations. *See WFA/Basin* at 36-37, where the Board rejected a special fuel consumption study by the defendant railroad based on a computer program where the railroad failed to produce the underlying data and computer program needed to evaluate the evidence.



operating statistics.<sup>42</sup> This kind of approach has been expressly rejected by the Board (*WFA/Basin* at 33), whereas SECI's approach is consistent with the methodology used by the Board in *WFA/Basin* and other recent SAC cases.

Third, CSXT's approach to developing the SFRR's Operating, G&A and MOW personnel clearly reflects the mindset of a large, unionized Class I railroad that is the product of numerous mergers and employee-protective conditions. CSXT's approach results in a rigid, top-down management structure, with new layers of supervision that are unnecessary to manage an efficient new railroad entrant. CSXT attempts to justify its enormous increase in the SFRR's G&A personnel<sup>43</sup> by "benchmarking" the SFRR against supposed "peer" railroads, but the SFRR is unlike any other railroad because it is a start-from-scratch operation with new a physical plant and equipment. It is also unburdened by the rigid craft (and supervisory) boundaries typical of Class I railroads' collective-bargaining and merger-implementation agreements.

For these reasons, and others detailed in Part III-D, the Board should accept SECI's Rebuttal calculation of annual operating expenses as the best evidence of record.

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<sup>42</sup> In fact, CSXT used the peak *hour's* operating statistics to calculate the SFRR's road locomotive requirements over the entire year. *See* III-D-5-7, *infra*.

<sup>43</sup> On Rebuttal, SECI has increased the SFRR's G&A staff by 27, from 71 to 98 employees, in response to CSXT's Reply arguments. *See* Part III-D-3-c, *infra*. The result is a G&A staffing level 50 percent higher than the highest level required by the Board in any previous coal rate case (66 in *AEP Texas*).

**E. Non-Road Property Investment**

SECI responds to CSXT's only point of difference with respect to SECI's Opening Evidence concerning non-road property investment in Part III-E.

**F. Real Property Investment**

SECI's Opening road property investment costs are well-supported by a variety of real-world project sources undertaken by SECI's engineering witnesses. Their calculation of the SFRR's road property investment costs also are consistent with Board precedent. Notwithstanding this evidence, CSXT seeks to increase the SFRR's road property investment costs well beyond the bounds of reason. Its calculations and unit cost changes also are inconsistent with prior Board rulings.

CSXT's greatly inflated costs are the result of several tactics. First, CSXT rejects virtually every SECI unit cost derived from a real-world project, opting instead to include a higher unit cost, and generally arguing that costs from such projects are not suitable for the SFRR because they are "small" or "atypical." In other words, in CSXT's opinion, it simply should cost more. SECI demonstrates in Part III-F that these projects are directly applicable to the construction that the SFRR will undertake. Moreover, Board precedent supports SECI's use of feasible, lower unit costs. *See, e.g., Duke/CSXT*, 7 S.T.B. at 489.

CSXT also included major changes to some elements of the road property investment costs with little or no explanation or support. For example, CSXT suggested that a smaller component of SECI's bridge designs was incompatible with the supporting

bridge elements.<sup>44</sup> CSXT implies that it “corrected” this issue, but in fact, CSXT completely redesigned very costly bridge substructure elements to accommodate the allegedly incompatible piece – rather than just fixing the one incompatible element. Likewise, all of CSXT’s buildings are based on completely new unit costs, because CSXT did not accept SECI’s real-world costs, but CSXT did not provide any support for these new costs nor has it provided any building designs. CSXT’s actions are not consistent with Board standards. *See, e.g., Duke/CSXT*, 7 S.T.B. at 481 (concluding that the defendant’s revised methodology for installing culverts would not be substituted for the shipper’s feasible methodology); *AEP Texas* at 63 (rejecting added, unexplained costs proposed by the railroad).

CSXT’s land valuation also is problematic. SECI’s land valuation witness determined that the SFRR would require an unprecedented \$921 million to acquire the SFRR’s right-of-way (including a limited number of easements). CSXT’s Reply valuation is over \$2.4 billion. Putting aside that CSXT’s land value is well in excess of any land valuation accepted by the Board, its figure is unsupported in many cases and improbable in others. First, CSXT’s land witness did not undertake any evaluation of most of the SFRR. Instead, he focused his attention on only a few metropolitan areas, and CSXT’s Reply only accounts for detailed differences between SECI’s values and CSXT’s values in Rockville, MD and Savannah, GA.<sup>45</sup> However, as SECI explains in

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<sup>44</sup> SECI’s demonstrates in Part III-F-5 that CSXT misread the bridge plan.

<sup>45</sup> For other locations, CSXT’s witness developed new values, but he did not provide any support that demonstrates that SECI’s values are not feasible.

Part III-F-1, even for those locations where CSXT did detail its differences its valuation does not actually support its figures. For example, in Rockville, MD, CSXT argued for much higher land value costs by relying on a large number of comparable sales from one of the highest priced residential locations in the area, Potomac, MD, which is not even located near the tracks. Likewise, SECI showed that CSXT's land values for vacant land in Richmond, VA were unrealistically high versus values for improved land in the same area. Additional analysis of CSXT's problematic Reply land costs is provided in Part III-F-1 and related e-workpapers.

CSXT's road property investment costs also are inflated due to its inclusion of unnecessary yard tracks, which in many cases also is haphazard. For example, CSXT included additional yard tracks in the track construction costs, but it did not include any additional grading or yard site preparation costs. In any event, CSXT's additional yard facilities are not needed by the SFRR, for the reasons described in Parts III-B and III-C.

Finally CSXT's road property investment costs are inflated due to the inclusion of costs to build the NS-owned MGA lines that the SFRR would operate over. As explained *supra* and in Part III-B, the SFRR does not need to build these facilities.

#### **G. Discounted Cash Flow Analysis**

As with its re-invention of the Board's *CP&L* ruling, CSXT seeks to revise *Major Issues* more to its liking on the subject of execution of the DCF model. Despite the Board's clear and unambiguous decision prescribing a 10-year model, CSXT advocates a 20-year approach on those sub-issues (capital carrying charges, depreciation, etc.) that would produce a more favorable outcome for CSXT. Perhaps recognizing that a

straightforward, collateral attack on *Major Issues* would be summarily dismissed, CSXT claims to have discovered “guidance” toward its position in a single, partial excerpt from the Board’s decision. As shown in Part III-G, however, that guidance is non-existent, and CSXT’s attempt to carve out selected exceptions to the mandatory 10-year model likewise should be rejected.

In Part III-G, SECI also explains how its locomotive financing approach is both consistent with precedent,<sup>46</sup> and supported by actual evidence of CSXT’s own locomotive acquisition financing practices, and in both those respects is clearly distinguishable from the speculative motor vehicle acquisition plan that was disapproved in *PSCo/Xcel*. CSXT’s case for the addition of an equity flotation cost likewise is dispelled, and the conflict between the parties’ positions on indexing land values is resolved squarely in favor of SECI. In sum, but for its updating the 2008 industry cost of capital to account for the Board’s September 24, 2009 final decision,<sup>47</sup> none of CSXT’s proposed adjustments to the DCF model should be adopted.

#### **H. Results of SAC Analysis**

In Part III-H, SECI responds to the exceptions taken by CSXT to SECI’s execution of the DCF Model, beyond those already addressed *supra*, and in Part III-G. SECI modifies its application of bonus depreciation to limit the benefit to assets purchased by the SFRR in 2008, and otherwise rebuts CSXT’s erroneous arguments

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<sup>46</sup> *Major Issues* at 37; *West Texas Utilities*, 1 S.T.B. at 670.

<sup>47</sup> This decision, of course, had not been issued as of the date of SECI’s Opening Evidence.

regarding the amortization period for certain railroad assets; its use of a 20-year DCF model in contradiction to the Board's directive in *Major Issues*; its improper discounting of unrealized tax depreciation and debt amortization following the last year of the DCF period; and its use of the industry-wide RCAF-A to index variable costs for MMM and rate prescription purposes, instead of the CSXT-specific URCS index directed by the Board's ruling in *OG&E*. SECI also updates cost of capital and URCS cost inputs to the MMM model, consistent with Board decisions served after SECI filed its Opening Evidence.

SECI's Rebuttal restatement shows that total SFRR revenues exceed total SAC by substantial margins in each year of the analysis period.<sup>48</sup> Applying MMM properly and in accordance with the Board's most recent precedent, SECI's Rebuttal Table III-H-2 shows the maximum r/vc ratios for each year of the model. Because those ratios all fall below 180%, maximum reasonable rates for the issue origins are set at the jurisdictional threshold prescribed in 49 U.S.C. § 10701(d). Rebuttal Table III-H-4 shows the maximum reasonable rates for shipments from each origin specified in Tariff CSXT-32531 in SECI-supplied railcars, as of 4Q09. Rebuttal Table III-H-5 shows the same results from the same origins for shipments in CSXT-supplied railcars.

As of the Fourth Quarter of 2009, the maximum lawful rates for CSXT coal service to SGS are as follows:

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<sup>48</sup> See Rebuttal Table III-H-1.

<b><u>Origin</u></b>	<b><u>Max. Rate Per Ton SECI Railcars</u></b>	<b><u>Max. Rate Per Ton CSXT Railcars</u></b>
Dotiki, KY	\$21.24	\$22.28
Pattiki, IL (Epworth)	\$22.81	\$23.92
Warrior, KY (Cardinal 9)	\$20.83	\$21.85
Elk Creek, KY (Cimarron)	\$20.81	\$21.83
Gibcoal, IN	\$22.54	\$23.63
Consol 95, WV	\$27.54	\$28.82
Bailey Mine, PA	\$29.32	\$30.67
Charleston, SC (coal)	\$8.55	\$9.11
Charleston, SC (Petcoke)	\$8.57	\$9.14

## **CONCLUSION**

Upon consideration of the entire record, the Board should issue a decision pursuant to 49 U.S.C. §§ 10701 and 10707, finding that CSXT possesses market dominance -- and thus the Board has jurisdiction -- over the transportation to which the challenged rates apply, and that those rates exceed a maximum reasonable level and therefore are unlawful. The Board then should order CSXT, pursuant to 49 U.S.C. §§ 10704 and 11704, to establish and maintain rates for coal transportation service to SGS at levels no higher than those shown by SECI's Rebuttal Evidence -- calculated separately for movements in SECI-supplied and CSXT-supplied railcars -- for each of the years 2009 through 2018, and to pay SECI reparations equal to the difference between freight charges calculated in accordance with such rates and freight charges actually paid by SECI on all shipments under Tariff CSXT 32531 from January 1, 2009 through the date of CSXT's compliance with the Board's order. Finally, also in accordance with 49 U.S.C. § 11704(b), the Board should award interest on such reparations in an amount sufficient to compensate SECI for the economic damages incurred as a consequence of CSXT's violation of 49 U.S.C. § 10701.<sup>49</sup>

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<sup>49</sup> In its Opening Evidence, SECI explained the basis of the Board's authority to ensure full damages compensation. See SECI Opening at I-38-41.



Respectfully submitted,

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Dated: April 15, 2010

Attorneys & Practitioners

## **II Market Dominance**

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<b>SEMINOLE ELECTRIC COOPERATIVE,</b>	)	
<b>INC.</b>	)	
	)	
<b>Complainant,</b>	)	
	)	<b>Docket No. 42110</b>
<b>v.</b>	)	
	)	
<b>CSX TRANSPORTATION, INC.</b>	)	
	)	
<b>Defendant.</b>	)	
	)	

## MARKET DOMINANCE

In its Reply, CSXT concedes that the challenged rates all exceed 180% of the variable costs of service by substantial margins, and that the quantitative market dominance test (49 U.S.C. §10707 (d)(1)) is satisfied. CSXT Reply at II-1. However, CSXT offers unadjusted system average variable costs (and associated r/vc ratios) that differ from those presented in SECI's Opening Evidence, due to its reliance on different traffic and operating characteristics for four (4) of the nine (9) URCS inputs. CSXT Reply at II-1-16. CSXT also argues that it faces "effective competition" for its rail transportation service to SGS from hypothetical (though non-existent) water and truck transportation alternatives, and that qualitative market dominance therefore is not present in this case.

In this Part II, SECI demonstrates that three (3) out of the four (4) URCS input changes proposed by CSXT are without merit, and should not be used.<sup>1</sup> SECI further shows that the hypothetical transportation “alternatives” touted by CSXT are not feasible options (either operationally or economically) for the diversion of any meaningful portion of SGS’s annual fuel requirements -- a fact attested to by CSXT and its own consultants in sworn testimony only six years ago -- and do not provide an effective constraint on CSXT’s pricing.

## **II. A. QUANTITATIVE EVIDENCE**

### **1. Traffic and Operating Characteristics**

CSXT proposes to change four (4) of the URCS inputs used to calculate unadjusted system average variable costs. Each is addressed below.

#### **a. Mileage**

As SECI noted in its Opening Narrative (at I-15), the parties agreed on the mileage inputs for each of the origin movements at issue. However, in its evidence, SECI inadvertently<sup>2</sup> included a Table II-A-1 that reflected the mileages shown in the parties’ May 11, 2009 Joint Submission to the Board, which was made prior to their

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<sup>1</sup> SECI also corrects certain errors in CSXT’s indexing procedures, to bring base year 2008 variable costs to 4Q09 wage and price levels.

<sup>2</sup> See CSXT Reply at II-6, n. 6.

reaching final agreement on mileages some two (2) weeks later. SECI's Rebuttal variable cost calculations utilize the agreed-upon mileages.<sup>3</sup>

**b. Movements from Epworth Should Be Considered Local**

Contrary to CSXT's claims (CSXT Reply at II-A-4-5), SECI's treatment of movements from the Pattiki Mine at Epworth, IL as local CSXT movements does not reflect an attempted "movement specific adjustment" to CSXT's system average costs. It simply reflects the reality of CSXT and EVWR operations from that origin. Indeed, it would be more accurate to characterize CSXT's hypertechnical characterization of those movements as "interline" -- based on the label that CSXT attaches in its accounting records -- as an artifice to inflate variable costs for shipments from this origin.

The facts are that EVWR moves coal trains from the Pattiki Mine to Evansville using SECI railcars and CSXT locomotive power.<sup>4</sup> The "interchange" at Evansville between EVWR and CSXT is nothing more than an exchange of crews; there is no switching or other train handling that takes place. Functionally, this hand-off is no different from any other routine crew change on the CSXT system.

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<sup>3</sup> The apparent discrepancy in mileage for the Gibcoal origin between SECI's Opening Table II-A-1 and its variable cost workpapers (*see* CSXT Reply at II-A-3) actually was a typographical error in the Table. The correct mileage for Gibcoal (904.0) was used in the variable cost calculation for SECI's Opening Evidence.

<sup>4</sup> *See* SECI Opening Electronic III-A-2 workpapers, folders, "CSXT Shipment Data" and "CSXT Train Movement Data."

EVWR was established in 2005 through a transfer of assets from CSXT to the Paducah & Louisville Railway, Inc. (“PAL”)<sup>5</sup>. The EVWR is a wholly owned subsidiary of PAL, which in turn is owned by Four Rivers Transportation, Inc., an entity in which CSXT retains ownership.<sup>6</sup> In the application for Board approval of the asset sale to PAL, both PAL and CSXT represented that the transaction establishing EVWR would “... result in operating economies, improved service, and improved financial viability,” and that the applicants did “not anticipate any changes to routes as EVWR takes over the service.”<sup>7</sup> To cost movements from Epworth as “interline” is to ignore the actual structure of the CSXT-PAL-EVWR arrangement, and the operational economics used to justify STB approval of the transaction. The establishment of a maximum reasonable rate for shipments from Epworth to SGS should not be biased against SECI solely because of an operational re-arrangement undertaken for CSXT’s benefit.

**c. Tons Per Car**

SECI did not ship coal or petcoke during the 2008 base year or the first quarter of 2009 from three (3) issue origins: Robinson Run, Bailey Mine and Charleston. On Opening, therefore, SECI estimated lading weights for movements from those origins

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<sup>5</sup> STB F.D. No. 34738, *Paducah & Louisville Railway, Inc. -- Acquisition -- CSXT Transportation, Inc.*, STB served November 17, 2005.

<sup>6</sup> CSXT’s 2007 Annual Report Form R-1 stated that CSXT held a majority ownership share in Four Rivers. In its Reply, CSXT says that this designation was inadvertently erroneous. See CSXT Reply at II-A-6 n.6. Whether CSXT owns a majority or minority stake is irrelevant. It still controls pricing from the coal origins served by EVWR, and operationally EVWR is simply an extension of CSXT, more akin to a subdivision than a separate interline party.

<sup>7</sup> See Application at 7.

by averaging the actual lading weights for SECI trains loaded at the other issue origins. On Reply, CSXT takes issue with this approach, claiming that because lading weight “is largely a function of the specific loading practices, characteristics, and capabilities of individual mines,” a better surrogate would be the average lading weights of *other shippers’* trains at each of the mines in question. CSXT Reply at II-8-9. However, this approach is more likely to understate SECI lading weights than accurately estimate them.

While CSXT suggests that the loading practices and capabilities at the issue mines differ significantly, the facts are otherwise. As the following table shows, all of the mines subject to Tariff CSXT-32531 are capable of loading full trainloads in four (4) hours or less, using batch or belt weighing systems that consistently load cars to or close to their marked capacity.

**Table II-A-1  
Coal Loading Facilities by Origin<sup>8</sup>**

Origin	State	Loading Capability	Train Size <sup>9</sup>	Scale Type
Bailey Mine	PA	4 hr.	130 cars	Batch
Cardinal 9 (Warrior)	KY	4 hr.	115 cars	Belt
Elk Creek (Cimarron)	KY	4 hr.	120 cars	Belt
Robinson Run (Consol 95)	WV	4 hr.	130 cars	Belt
Dotiki	KY	4 hr.	105 cars	Belt
Gibcoal (Sullivan)	IN	4 hr.	120 cars	Batch
Pattiki (Epworth)	IL	4 hr.	115 cars	Belt

With the mines’ loading facilities so similar, the principal determinant of lading weight is the capacity of the *railcars*. As discussed *infra*, and is not disputed by CSXT, SECI’s coal traffic consistently moves in 120-ton, aluminum gondola cars, with a

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<sup>8</sup> Source: “Coal Origin Directory (updated 1/26/2010),” tab “CSX Coal Loading Facilities,” available at [http://www.csx.com/?fuseaction=customers.coal\\_locations](http://www.csx.com/?fuseaction=customers.coal_locations).

<sup>9</sup> Based on a 53’01” car length.

286,000 gross weight on rail (“GWR”) capability. Indeed, Tariff CSXT-32531 specifies that all shipments must be loaded in 286,000 pound GWR equipment. The same SECI cars already are or would be used in service from any of the issue origins. In terms of an average weight to use as a surrogate for SECI coal trains, the more accurate measure is the average lading in the loaded SECI cars, not an average based on other shippers’ equipment, which are likely to differ from SECI’s railcars both in type (steel vs. aluminum) and capacity.

In calculating its average lading weights for the origins in question, CSXT included movements to non-utility destinations which are not at all comparable to the SECI movements.<sup>10</sup> CSXT also included shipments in railcars that do not meet the equipment specifications in the tariff at issue. {

} Those cars no longer are in the SECI fleet.

Their inclusion in CSXT’s lading weight calculations distorts CSXT’s average lading weight results, and improperly biases the variable cost calculations against SECI. SECI’s reliance on average weights for shipments in the actual railcars that have and will be used

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<sup>10</sup> See CSXT Reply e-workpaper “CSXT Lading Weights.xls.”

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<sup>12</sup>{

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for the service subject to the challenged rates represents the best evidence of record. *Cf. West Texas Utilities*, 1 S.T.B. at 678.

**d. Car Ownership**

In its Opening Evidence, SECI presented URCS-based calculations of variable costs using two (2) alternative inputs for railcar ownership -- private railcars supplied by SECI, and railcars supplied by CSXT. The reasons for these alternative calculations are simple and straightforward: at least since 1998, the vast majority of coal shipments to SGS have moved in private SECI cars,<sup>13</sup> and the tariff at issue makes provision for service both in private and carrier equipment:

“Equipment: Railroad owned cars or Private 286,000  
pound GWR capacity, rotary dump cars.”

*Source:* SECI Exhibit I-1.

Consistent with the terms of the tariff, in determining revenue-to-variable cost ratios for purposes of the jurisdictional threshold and application of the MMM methodology, SECI adjusted the rates shown in Tariff CSXT-32531 by the allowance specified for application to shipments in SECI railcars to calculate r/vc ratios for private

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<sup>13</sup> {

} SECI ultimately placed seven (7) sets of railcars into service, at no cost to CSXT. See Seminole Electric Coop., Inc.’s Petition to Determine Need for Electric Power Plant, March 2006, Need Study, Fla. Pub. Serv. Comm’n Docket No. 060220-EC, Document No. 02090 (filed March 10, 2006) at 37, available at <http://www.floridapsc.com/library/filings/06/02090-06/02090-06.pdf>

car movements. Ratios for hypothetical movements in CSXT cars<sup>14</sup> were determined by application of the unadjusted tariff rates to variable costs calculated using the railroad car ownership input.

In its Reply, CSXT takes issue with both aspects of SECI's approach. Though it does not challenge the fact that shipments under the tariff move in private cars (as it cannot), CSXT nonetheless insists that "the appropriate car ownership input to URCS is railroad ownership." CSXT Reply at II-12. CSXT likewise challenges SECI's application of the private car allowance to adjust the tariff rates for purposes of calculating r/vc ratios for private car movements, arguing instead that the allowance<sup>15</sup> should be treated as a variable cost to CSXT. *Id.*, at II-13-14. Neither position is meritorious.

It should be beyond dispute that the nine (9) URCS inputs used to calculate unadjusted variable costs should be based on the *actual* operating characteristics of the movements in question, to the maximum extent possible. Reliance on actual movement parameters was endorsed repeatedly by the Board and its predecessor prior to *Major*

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<sup>14</sup> As with movements under the prior contract, since January 1, 2009 shipments under Tariff CSXT-32531 have taken place in SECI railcars.

<sup>15</sup> CSXT suggests that by utilizing private cars and accepting allowance credits, SECI "recognizes that the allowance of \$0.19 per loaded car mile is appropriately compensatory." CSXT Reply at II-11. SECI "recognizes" no such thing. SECI utilizes private cars because it acquired seven (7) sets of cars to fulfill prior contract commitments to CSXT, and idling that many railcars would be extremely and unjustifiably costly. It accepted the allowance credit because that is the term that CSXT prescribed under the tariff that it unilaterally established for coal shipments to SGS.

*Issues*,<sup>16</sup> and in that decision the Board characterized the nine (9) inputs as incorporating “numerous movement-specific operating characteristics” into the URCS calculation. *Major Issues* at 52, 60. *See also KCP&L* at 5, 7. In its Reply, CSXT itself purports to follow this rule with respect to inputs other than car ownership,<sup>17</sup> but as to that single operating parameter argues that because the *tariff* includes rates applicable to movements in CSXT equipment, “the appropriate car ownership input to URCS is railroad ownership.” CSXT at II-12. CSXT is incorrect.

Because the issue traffic historically has moved and currently moves in SECI-supplied railcars -- a fact which is not disputed by CSXT and is consistent with the terms of the governing tariff -- *Major Issues* and prior precedent dictate that the proper URCS input for variable cost purposes is private equipment, the actual parameter that applies to the SGS coal movement. SECI’s principal variable cost calculations correctly incorporate this input. SECI has presented alternative calculations based on the use of railroad-supplied cars, as that also is consistent with the tariff and it is possible that on occasion some future shipments may take place in CSXT equipment. However, it would be inconsistent with reality and the rules governing URCS-based cost calculations to assume -- as CSXT does -- that all shipments take place in carrier cars, when the known fact is that SECI supplies the railcars for the issue traffic.

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<sup>16</sup> *Aluminum Co. of America v. Alton & Southern Ry. Co.*, Docket No. 39884 (ICC served November 2, 1989) at 11.

<sup>17</sup> *See* CSXT Reply Table A-II-2 and CSXT Reply e-workpaper “STB 2008 URCS Costs.xls”.

CSXT's proposed treatment of the "allowance" that applies to shipments in SECI equipment also is inconsistent with the variable cost regime prescribed by the Board in *Major Issues*. Relying on agency decisions prior to 2006, CSXT argues that the allowance should be considered a cost incurred by CSXT when SECI supplies the railcars, and included in variable costs as an "offset" to URCS unit costs for shipments in railroad equipment. CSXT Reply at II-13-14. However, the Board squarely rejected this position in *Major Issues*:

Carriers also argue that actual car rental costs should be allowed in variable cost calculations.<sup>191</sup> When a party inputs private car ownership into URCS for a specific movement, URCS calculates a system-wide private car allowance and then allocates that allowance over all movements. The model does not know, however, whether a carrier has chosen to actually pay a private car allowance or simply to lower the rate for the movement to reflect private car ownership. While we recognize this limitation in URCS, we are concerned that allowance of actual car rental costs in URCS would be subject to manipulation by carriers. Carriers determine whether to offer an allowance at all or whether to adjust rates to reflect a shipper's car ownership. Thus, one method of accounting for private car ownership would be deemed a "cost" in URCS while the other would not. Only railroad discretion would determine how to account for this expense.<sup>192</sup>

*Major Issues* at 58-59. (Footnotes omitted).

When it designed Tariff CSXT-32531, CSXT could have included a set of line-haul rates specifically applicable to shipments in SECI railcars (the expected and actual operating practice). Instead, it elected to establish a mileage-based allowance that functionally serves the same purpose; *i.e.*, providing a discount to SECI in exchange for relieving CSXT of the cost burden associated

with providing cars. Its position on Reply regarding the treatment of that allowance for variable cost purposes, however, reveals an attempt at just the type of manipulation that concerned the Board in *Major Issues*, and led the Board to exclude such add-ons from the variable cost calculation.

In determining r/vc ratios for jurisdictional threshold and MMM purposes, SECI adjusted the line-haul rates in Tariff CSXT-32531 to account for the allowance in computing ratios for movements in SECI railcars. CSXT disputes this adjustment, claiming that SECI has “created” private car rates where none actually exist in the tariff.<sup>18</sup> *Id.* at II-12.<sup>19</sup> It is SECI’s position that to accurately calculate r/vc ratios for shipper car movements, it is appropriate to reduce the revenue that CSXT receives by the amount of the allowance that it actually pays to SECI, based on the computation procedures described in the governing tariff. Since the Board’s ruling in *Major Issues* rejected CSXT’s “add-on” theory, the only alternative to SECI’s approach would be to calculate all r/vc ratios solely on the basis of the line-haul rates “unambiguously set forth in Tariff

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<sup>18</sup> Interestingly, elsewhere in Part II of its Reply Narrative CSXT specifically refers to “private aluminum car rates” established under Tariff CSXT-32531, and uses SECI’s methodology to calculate them. See CSXT Reply at II-23, Table II-B-2; CSXT Reply e-workpaper “Cost of Coal in Florida 2008.xlsx.” CSXT also uses a private car rate calculated in the same way in its development of r/vc ratios for purposes of the Maximum Markup Methodology. As SECI does in running the URCS Phase III cost program, CSXT simply set the car ownership input to “Private.” See CSXT Reply e-workpapers “STB URCS Costs.xls,” “SFRR MMM Model Reply.xls” and “Coal Revenue Forecast Reply.xls.”

<sup>19</sup> CSXT also criticizes SECI’s calculation of the rate adjustment, based on its erroneous arguments regarding lading weights that SECI has addressed, *supra*.

CSXT-32531.” CSXT Reply at II-12. Obviously, this would tend to inflate the ratios for movements in SECI railcars, relative to the ratios applicable to hypothetical shipments in CSXT equipment, which in SECI’s view would not be proper.

In this Rebuttal presentation, SECI continues to present alternative calculations of variable costs based on the two (2) car supply options set out in the issue tariff. SECI also continues to calculate r/vc ratios for private car movements in a manner which incorporates the tariff allowance for shipments in SECI railcars, as the more accurate approach and in preference to ignoring the revenue impact of the allowance on CSXT and using only the line-haul tariff rates.

**e. Indexing**

In its Reply, CSXT calculated quarterly CSXT-specific indexes to bring 2008 base year variable cost to wage and price levels for each quarter of 2009. However, in executing its indexing procedure, CSXT did not subtract taxes on unemployment insurance as reported in its Annual Report R-1 Schedule 450, Line 8 (\$15,419,000) from the “Wage Supplements Less Unemployment Insurance” expenses category. It then failed to add these monies to the “Non-Indexable” expense category.<sup>20</sup> This error has the effect of artificially increasing the index for each quarter of 2009.<sup>21</sup>

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<sup>20</sup> See CSXT Reply e-workpaper “IE3-80 CSXT index.xls.”

<sup>21</sup> Interestingly, CSXT did not calculate a separate Eastern Region index for the portion of the movement from the Epworth (Pattiki) origin that CSXT elsewhere claims should be costed using Eastern Region URCS instead of CSXT system average data.

In its Rebuttal restatement, SECI updates the indexing procedures used in its Opening Evidence by adding inputs and outputs that were not available at the time that its evidence was filed. First, SECI uses the revised STB 2008 CSXT URCS -- the source data utilized by CSXT -- to determine the "Return On Investment" portion of the index. Next, SECI updates the Producer Price-All Commodities Indexes for the months of April through June 2009, to incorporate the final values published by the Bureau of Labor Statistics. Finally, SECI adds all necessary inputs and calculations to derive indexes for 3Q09 and 4Q09. SECI's updated indexes and calculations are shown in SECI Rebuttal e-workpaper "IE3-80 CSXT Index revised.xls."

## **2. Variable Costs**

Rebuttal Exhibits II-A-1, II-A-2, II-A-3, and II-A-4 show SECI's Rebuttal calculations of variable costs, separately for movements in SECI-supplied railcars and for movements in CSXT equipment. Costs are based on the STB's updated CSXT 2008 URCS unit costs (which only become available after SECI filed its Opening Evidence), indexed to each quarter of 2009 wage and price levels using the Board's IE3-80 procedures. As on Opening, variable costs are calculated on a system average basis, with no adjustments other than those approved in *Review of the General Purpose Costing System*, 2 S.T.B. 659 (1997) and *Major Issues*. See also *KCP&L* at 7-8.

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This is further evidence that SECI correctly characterizes shipments from Epworth as local CSXT moves. See CSXT Reply e-workpaper "STB 2008 URCS Costs.xls."

Table II-A-2, below summarizes the traffic and operating parameters upon which SECI's variable costs calculations are based. The updated variable costs themselves, along with the r/vc ratios produced by the challenged rates, are shown on Table II-A-3 (private cars) and Table II-A-4 (carrier cars). SECI's Rebuttal Evidence demonstrates that when compared to the rates reflected in Tariff CSXT-32531, the system average CSXT variable costs produce r/vc ratios that range between 306% and 590% for movements in SECI-supplied railcars, and between 303% and 563% for movements in CSXT equipment. The ratios for all issue movements are far in excess of the Board's jurisdictional threshold.



**Table II-A-2**

**Summary of Traffic & Operating Parameters**

<b><u>Movement Parameters</u></b> <b>(1)</b>	<b><u>Dotiki, KY</u></b> <b>(2)</b>	<b><u>Pattiki, II (Epworth)</u></b> <b>(3)</b>	<b><u>Warrior, Ky (Cardinal 9)</u></b> <b>(4)</b>	<b><u>Elk Creek, KY (Cimarron)</u></b> <b>(5)</b>	<b><u>Gibcoai, IN</u></b> <b>(6)</b>	<b><u>Charleston, SC (Coal)</u></b> <b>(7)</b>	<b><u>Charleston, SC (Pet Coke)</u></b> <b>(8)</b>	<b><u>Consol 95, WV (Robinson Run)</u></b> <b>(8)</b>	<b><u>Bailey Mine, Pa</u></b> <b>(9)</b>
1. Railroad	CSXT	CSXT	CSXT	CSXT	CSXT	CSXT	CSXT	CSXT	CSXT
2. Miles	849.8	911.3	835.0	832.0	904.0	316.7	316.7	1,113.8	1,188.4
3. Shipment Type	Local	Local	Local	Local	Local	Local	Local	Local	Local
4. Cars per Train	98.6	97.7	99.5	99.6	98.6	98.6	98.6	98.6	98.6
5. Car Type	Rotary Gondola	Rotary Gondola	Rotary Gondola	Rotary Gondola	Rotary Gondola	Rotary Gondola	Rotary Gondola	Rotary Gondola	Rotary Gondola
6. Car Ownership	Private or Railroad	Private or Railroad	Private or Railroad	Private or Railroad	Private or Railroad	Private or Railroad	Private or Railroad	Private or Railroad	Private or Railroad
7. Tons per Car	119.6	118.3	120.4	119.4	119.5	119.5	119.5	119.5	119.5
8. Commodity	Coal	Coal	Coal	Coal	Coal	Coal	Pet Coke	Coal	Coal
9. Movement Type	Unit Train	Unit Train	Unit Train	Unit Train	Unit Train	Unit Train	Unit Train	Unit Train	Unit Train

Table II-A-3

**Variable Cost and Revenue/Variable Cost Ratios (Private Railcars)**

<b>Item (1)</b>	<b>Dotiki, KY (2)</b>	<b>Pattiki, IL (Egworth) (3)</b>	<b>Warrior, KY (Cardinal) (4)</b>	<b>Elk Creek, KY (Cimarron) (5)</b>	<b>Gibcoai, IN (6)</b>	<b>Charleston, SC (Coal) (7)</b>	<b>Charleston, SC (Pet Coke) (8)</b>	<b>Consol 95, WV (Robinson Run) (9)</b>	<b>Balley Mine, Pa (10)</b>
<b><u>1Q09</u></b>									
1. Phase III Cost Base Year 2008	\$12.50	\$13.42	\$12.25	\$12.24	\$13.26	\$5.03	\$5.04	\$16.20	\$17.24
2. Index to 1Q09	0.91089	0.91089	0.91089	0.91089	0.91089	0.91089	0.91089	0.91089	0.91089
3. Phase III Cost 1Q09 (L1xL2)	\$11.38	\$12.22	\$11.16	\$11.15	\$12.08	\$4.58	\$4.59	\$14.75	\$15.71
4. Jurisdictional Threshold (L3xL.80)	\$20.48	\$22.00	\$20.09	\$20.07	\$21.74	\$8.24	\$8.26	\$26.55	\$28.28
5. Tariff CSXT- 32531 Rate (1Q09)	\$40.39	\$42.78	\$40.43	\$40.42	\$43.49	\$28.01	\$28.01	\$47.98	\$49.80
6. Tariff R/VC Ratio (1Q09)	3.55	3.50	3.62	3.63	3.60	6.12	6.10	3.25	3.17
<b><u>2Q09</u></b>									
7. Index to 2Q09	0.91137	0.91137	0.91137	0.91137	0.91137	0.91137	0.91137	0.91137	0.91137
8. Phase III Cost Index to 2Q09 (L1xL7)	\$11.39	\$12.23	\$11.17	\$11.16	\$12.08	\$4.58	\$4.59	\$14.76	\$15.72
9. Jurisdictional Threshold (L8xL.80)	\$20.50	\$22.01	\$20.11	\$20.09	\$21.74	\$8.24	\$8.26	\$26.57	\$28.30
10. Tariff CSXT- 32531 Rate (2Q09)	\$40.39	\$42.78	\$40.43	\$40.42	\$43.49	\$28.01	\$28.01	\$47.98	\$49.80
11. Tariff R/VC Ratio (2Q09)	3.55	3.50	3.62	3.62	3.60	6.12	6.10	3.25	3.17
<b><u>3Q09</u></b>									
12. Index to 3Q09	0.93290	0.93290	0.93290	0.93290	0.93290	0.93290	0.93290	0.93290	0.93290
13. Phase III Cost Index to 3Q09 (L1xL12)	\$11.66	\$12.52	\$11.43	\$11.42	\$12.37	\$4.69	\$4.70	\$15.11	\$16.09
14. Jurisdictional Threshold (L13xL.80)	\$20.99	\$22.54	\$20.57	\$20.56	\$22.27	\$8.44	\$8.46	\$27.20	\$28.96
15. Tariff CSXT- 32531 Rate (3Q09)	\$40.39	\$42.78	\$40.43	\$40.42	\$43.49	\$28.01	\$28.01	\$47.98	\$49.80
16. Tariff R/VC Ratio (3Q09)	3.46	3.42	3.54	3.54	3.52	5.97	5.96	3.18	3.10
<b><u>4Q09</u></b>									
17. Index to 4Q09	0.94396	0.94396	0.94396	0.94396	0.94396	0.94396	0.94396	0.94396	0.94396
18. Phase III Cost Index to 4Q09 (L1xL17)	\$11.79	\$12.66	\$11.57	\$11.56	\$12.52	\$4.75	\$4.76	\$15.29	\$16.28
19. Jurisdictional Threshold (L18xL.80)	\$21.22	\$22.79	\$20.83	\$20.81	\$22.54	\$8.55	\$8.57	\$27.52	\$29.30
20. Tariff CSXT- 32531 Rate (4Q09)	\$40.39	\$42.78	\$40.43	\$40.42	\$43.49	\$28.01	\$28.01	\$47.98	\$49.80
21. Tariff R/VC Ratio (4Q09)	3.43	3.38	3.49	3.50	3.47	5.90	5.88	3.14	3.06

**Table II-A-4**  
**Variable Cost and Revenue/Variable Cost Ratios (Carrier Railcars)**

<b>Item (1)</b>	<b><u>Dotiki, KY</u> (2)</b>	<b><u>Pattiki, IL</u> (<u>Epworth</u>) (3)</b>	<b><u>Warrior, KY</u> (<u>Cardinal 9</u>) (4)</b>	<b><u>Elk Creek, KY</u> (<u>Cimarron</u>) (5)</b>	<b><u>Gibco, IN</u> (6)</b>	<b><u>Charleston, SC</u> (<u>Coal</u>) (7)</b>	<b><u>Charleston, SC</u> (<u>Pet Coke</u>) (8)</b>	<b><u>Consol 95, WV</u> (<u>Robinson Run</u>) (9)</b>	<b><u>Bailey Mine, Pa</u> (10)</b>
<b><u>1Q09</u></b>									
1. Phase III Cost Base Year 2008	\$13.11	\$14.07	\$12.86	\$12.85	\$13.90	\$5.36	\$5.37	\$16.95	\$18.04
2. Index to 1Q09	0.91089	0.91089	0.91089	0.91089	0.91089	0.91089	0.91089	0.91089	0.91089
3. Phase III Cost 1Q09 (L1xL2)	\$11.94	\$12.82	\$11.71	\$11.70	\$12.66	\$4.88	\$4.89	\$15.44	\$16.43
4. Jurisdictional Threshold (L3x1.80)	\$21.49	\$23.08	\$21.08	\$21.06	\$22.79	\$8.78	\$8.80	\$27.79	\$29.57
5. Tariff CSXT- 32531 Rate (1Q09)	\$41.68	\$44.18	\$41.68	\$41.68	\$44.93	\$28.48	\$28.48	\$49.71	\$51.66
6. Tariff R/VC Ratio (1Q09)	3.49	3.45	3.56	3.56	3.55	5.84	5.82	3.22	3.14
<b><u>2Q09</u></b>									
7. Index to 2Q09	0.91137	0.91137	0.91137	0.91137	0.91137	0.91137	0.91137	0.91137	0.91137
8. Phase III Cost Index to 2Q09 (L1xL7)	\$11.95	\$12.82	\$11.72	\$11.71	\$12.67	\$4.89	\$4.90	\$15.45	\$16.44
9. Jurisdictional Threshold (L8x1.80)	\$21.51	\$23.08	\$21.10	\$21.08	\$22.81	\$8.80	\$8.82	\$27.81	\$29.59
10. Tariff CSXT- 32531 Rate (2Q09)	\$41.68	\$44.18	\$41.68	\$41.68	\$44.93	\$28.48	\$28.48	\$49.71	\$51.66
11. Tariff R/VC Ratio (2Q09)	3.49	3.45	3.56	3.56	3.55	5.82	5.81	3.22	3.14
<b><u>3Q09</u></b>									
12. Index to 3Q09	0.93290	0.93290	0.93290	0.93290	0.93290	0.93290	0.93290	0.93290	0.93290
13. Phase III Cost Index to 3Q09 (L1xL12)	\$12.23	\$13.13	\$11.99	\$11.99	\$12.97	\$5.00	\$5.01	\$15.82	\$16.83
14. Jurisdictional Threshold(L13x1.80)	\$22.01	\$23.63	\$21.58	\$21.58	\$23.35	\$9.00	\$9.02	\$28.48	\$30.29
15. Tariff CSXT- 32531 Rate (3Q09)	\$41.68	\$44.18	\$41.68	\$41.68	\$44.93	\$28.48	\$28.48	\$49.71	\$51.66
16. Tariff R/VC Ratio (3Q09)	3.41	3.36	3.48	3.48	3.46	5.70	5.68	3.14	3.07
<b><u>4Q09</u></b>									
17. Index to 4Q09	0.94396	0.94396	0.94396	0.94396	0.94396	0.94396	0.94396	0.94396	0.94396
18. Phase III Cost Index to 4Q09 (L1xL17)	\$12.37	\$13.28	\$12.14	\$12.13	\$13.12	\$5.06	\$5.07	\$16.00	\$17.03
19. Jurisdictional Threshold(L18x1.80)	\$22.27	\$23.90	\$21.85	\$21.83	\$23.62	\$9.11	\$9.13	\$28.80	\$30.65
20. Tariff CSXT- 32531 Rate (4Q09)	\$41.68	\$44.18	\$41.68	\$41.68	\$44.93	\$28.48	\$28.48	\$49.71	\$51.66
21. Tariff R/VC Ratio (4Q09)	3.37	3.33	3.43	3.44	3.42	5.63	5.62	3.11	3.03

## **II. B. QUALITATIVE MARKET DOMINANCE**

In its Reply, CSXT advances a theory of qualitative market dominance which, if accepted by the Board, would lead to the *de facto* deregulation of virtually any rail rate on utility coal traffic. Stripped of the veneer of its video<sup>22</sup> and condescending rhetoric, CSXT's basic thesis is that so long as a railroad or its consultants can hypothesize a transportation alternative that, while non-existent, could be created on paper or a computer spreadsheet, and can concoct an estimated "cost" of that creation, market dominance does not exist so long as the railroad's rates approximate that "cost." In CSXT's paradigm, it does not matter whether the hypothetical alternative actually has been used, or even has been invoked by the shipper as a possibility in its commercial dealings with the railroad. So long as the railroad *claims* to have considered this invented option in developing its rates, CSXT's theory would hold that sufficient to disprove market dominance. The Board's market dominance jurisprudence has never allowed a

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<sup>22</sup> {

} The Board's regulations (49 C.F.R. Part 1104.5(b)) require that any evidentiary matter sought be established by a writing (which would include a video) must be supported by the sworn declaration of the "person making the same." CSXT's Reply Exhibit II-B-1 is verified only by CSXT's retained consultants, Messrs. Seth Schwartz and John Stamberg of Energy Ventures Analysis ("EVA"). However, it does not appear that either Mr. Schwartz or Mr. Stamberg wrote, produced or otherwise in any way physically prepared the video, nor do either of them appear in it. Statements made in the video by narrators or other individuals whose images appear in it are not verified, and as such cannot constitute evidence. At most, the video can only be considered a visual summary of the claims asserted by Messrs. Schwartz and Stamberg in their written reports, also submitted as Exhibits (or workpapers) to CSXT's Reply Evidence, and nothing more. Herein, SECI rebuts those claims.

case to turn on such a construct, and it should not break such dangerous new ground in this proceeding.

CSXT argues that it faces effective competition, principally in the form of barge deliveries of coal to SGS via the Port of Jacksonville and the St. John's River, an idea which SECI once considered but dismissed as infeasible, and for which there exists no essential infrastructure or proven capability. The alleged feasibility of this "option" -- both operationally and economically -- rests entirely on an analysis offered by consultants for CSXT who have no experience in the actual construction or operation of barge transportation and unloading facilities, and who previously represented to the Florida Public Service Commission ("FPSC") in sworn testimony not only that rail service generally was superior to barge transportation as an efficient mode of delivery coal to Florida, but that SGS and SECI specifically did *not* enjoy rail/barge competition and were "captive" to CSXT. Secondly, CSXT claims that coal or petcoke could be delivered to SGS by truck from unnamed transfer and storage facilities at Jacksonville. Tellingly, however, it does not allege that the volumes that it claims could move this way are significant enough to influence the carrier's pricing on the remainder of SECI's coal traffic. *See CSXT Reply at II-16-17.*

In this Part II-B<sup>23</sup>, SECI demonstrates that the hypothetical barge delivery system that CSXT postulates is precluded by key infrastructure requirements -- such as

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<sup>23</sup> The facts set forth in this Part II-B are verified by Mr. Rick Baker, Executive Director of Bulk Terminals Group, LLC, a barge transportation and terminal design and operating company that in 2003 examined some aspects of the "option" now alleged by CSXT; Mr. Hamilton Oven, former Administrator of the Siting Coordination Office of the Florida Department of Environmental Protection; Mr. Michael Opalinski, SECI's

coal vessel transfer facilities at Jacksonville and an unloading dock and coal conveyer at Palatka -- which cannot be met practically, and is operationally and economically infeasible for the volumes necessary to constrain CSXT's pricing power. As CSXT's own consultants told the FPSC in 2004, SGS does not benefit from a competitive barge delivery option. Moreover, even if those disqualifying obstacles somehow could be overcome, in this proceeding CSXT's consultants have seriously understated the costs associated with the alleged alternative. SECI also shows that CSXT has understated the cost and overstated the feasibility of its "truck from Jacksonville" option, and that in any case the amount of fuel that hypothetically could be transported via that mode is too small to have a limiting influence on CSXT's rail rates.

When the rail coal transportation contract that had been in place between SECI and CSXT expired in 2008, and SECI would not accept CSXT's demand for a significant rate increase, CSXT upped the ante and established common carrier rates which caused SECI's transportation costs to double overnight. CSXT was able to do this for one simple reason: it possesses market dominance over SECI's coal traffic.

**1. An Accurate History of Coal Transportation to SGS**

Referencing a single page of a single table from the 1979 Final Environmental Impact Statement for SGS Units 1 and 2, CSXT begins its argument with the claim that access to water transportation was a key consideration in the SGS site selection process. CSXT Reply at II-18-19. The facts, however, are otherwise. A more

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Senior Vice President of Strategic Services; and Mr. James Heller, President of Hellerworx, Inc. The photographs included in this Part II-B are verified by the photographer, Mr. Robert Payne, Manager of Operations for SGS.

complete review of the *entire* EIS shows that while access to *transportation* was an important factor, the emphatically preferred mode was rail:

Approximately 3,262,000 tons of coal will be required by the plant annually. To transport this amount of fuel from the mines in Western Kentucky and Southern Illinois will require large capacity carriers. Rail and barge carriers are the most viable options.

*Direct barge delivery from mine to the site is not attractive because of the requirements for dredging access to the site, navigational improvements, and the engineering and cost requirements for barge unloading and coal conveyance facilities.*

Rail access is readily available at the site. Delivery may be made entirely by rail from the mines or in combination with barge transportation at points along the route.

*Barge-rail and rail-barge-rail are options, but appear to be uneconomical at the current time.*<sup>24</sup>

In concluding that the construction of SGS Units 1 and 2 at their current location was the “preferred alternative,” reliance on rail transportation again was highlighted:

REA has also determined that the environmentally preferred coal fired generation configuration will call for Seminole to construct the plant on the Putnam site and employ: rail delivery of coal . . . .<sup>25</sup>

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<sup>24</sup> SECI Rebuttal e-workpaper “EIS 1979.pdf” at 29 (emphasis supplied).

<sup>25</sup> *Id.* at 39.

Table 4.1 of the EIS -- from which CSXT extracts but a single page -- actually is comprised of six pages, and lists 58 separate “advantages” and 33 individual “disadvantages” in comparing the four sites that were studied.<sup>26</sup> “No access to water transportation” plainly was not the “only disadvantage” cited for two of the alternatives,<sup>27</sup> and proximity to the St. Johns River also was listed as a *disadvantage* for the Putnam site, due to the presence of the endangered Florida<sup>28</sup> manatee. CSXT’s claim that barge transportation access was an important consideration in the SGS site selection process is contradicted by the written record.<sup>29</sup>

CSXT correctly notes that SECI used a rail-barge-rail routing for its coal traffic between 1984 and 1998, but neglects to point out that all of this coal was delivered by CSXT (or its predecessor), as the sole carrier with access to SGS. {

} CSXT offers no documentary evidence of this claim, and there is none. To the contrary, if anything motivated CSXT first to agree to a contract for rates and service to

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<sup>26</sup> *Id.*, Table 4.1.

<sup>27</sup> CSXT Reply at II-19.

<sup>28</sup> SECI Rebuttal e-workpaper “EIS 1979.pdf” at Table 4.1(panel 1).

<sup>29</sup> CSXT references a Florida Regional Planning Annual Study as evidence that SGS was located specifically to take advantage of potential water transportation. CSXT Reply at II-19. However, a review of the referenced workpaper shows that coal barge traffic in the St. Johns estuary was considered a “transportation problem.” There is no favorable discussion of the feasibility or desirability of such an “option.”



SGS, it was the threat of regulation by the Board's predecessor, {

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CSXT suggests that the question of all-rail service to SGS first arose in 1996 at SECI's behest,<sup>30</sup> but this is not the case. The parties' {

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<sup>30</sup> CSXT Reply at II-19.

<sup>31</sup> See CSXT Reply e-workpaper "ICC-CSXT-C-59067" at p.6.

<sup>32</sup> See SECI Opening at I-9.

}

CSXT likewise mischaracterizes the provisions of the {

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Related to its revisionist approach to the history of the parties' commercial relationship is CSXT's repeated claim<sup>36</sup> that the all-rail contract rates offered to SECI in 1998 were unusually low as compared to those paid by other CSXT coal shippers at the time. It is telling that CSXT makes no reference to any empirical data in support of its assertion, because in fact, the available data shows it to be false.

According to statistics collected by Ventyx<sup>37</sup> in its EV Fuels database, SECI was the only major all-rail shipper of Illinois Basin coal among CSXT's Southeast customers in 1999, the first year in which the CSXT-68681 contract rates were in effect. This fact alone tends to undermine the notion that SECI's rates were below market; CSXT effectively created an Illinois Basin all-rail market with the transaction. However, expanding the scope of comparison to include all coal delivered by rail to Florida that year (most of which moved from Central Appalachia), it is clear that SECI's new contract rates were not unusually favorable. As summarized on Table II-B-1, below, Ventyx reports 70 different coal purchases<sup>38</sup> delivered by rail to Florida destinations in 1999. When the estimated rail rates are sorted from highest to lowest on a ton-mile basis (to

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<sup>36</sup> See CSXT Reply at I-5, II-19-21, II-45.

<sup>37</sup> Ventyx is a firm which, *inter alia*, collects and collates publicly available data regarding delivered coal prices and their components. Principal sources for the EV Fuels database include Form EIA-923 reports of delivered coal prices, coal sources and quality, contract types and contract expiration dates. Ventyx adds its own developed data on transportation routings, mileages, routes and FOB mine prices, based on a proprietary model. See [www.ventyx.com](http://www.ventyx.com). The data supporting Tables II-B-1 and II-B-2 are included in SECI's Rebuttal e-workpapers at "1999railrateexhibits.xls."

<sup>38</sup> Some generators purchased coal from the same origin under more than one contract, in which case the shipments under each contract are shown separately.

accommodate differences in distance), the rates for SECI's all-rail Illinois Basin shipments are shown to be squarely in the middle of the range: the 31<sup>st</sup>, 34<sup>th</sup> and 35<sup>th</sup> highest out of 70, at 17-18 mills per ton-mile.<sup>39</sup>

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<sup>39</sup> The range for all reported movements went from a low of 12.7 mills to a high of 34 mills.

# Table II-B-1

Estimated Rail Rates for Rail-Delivered Coal Shipments to Florida, 1999

Coal Purch. #	Plant Operator Name	Plant Name	Coal Basin Name	ST	Quantity (000s tons)	Railroad Cost \$/ton	Avg Railroad Miles	Avg. Rail mill/ton-mile
1	Gainesville Regional Utilities	Deerhaven Generating Station	Central Appalachia	KY	21	26.48	779	34.0
2	JEA	St Johns River Power Park	Central Appalachia	KY	1,011	19.85	721	27.5
3	Gainesville Regional Utilities	Deerhaven Generating Station	Central Appalachia	KY	19	20.13	791	25.4
4	Progress Energy Florida	Crystal River	Central Appalachia	VA	10	19.06	794	24.0
5	Progress Energy Florida	Crystal River	Central Appalachia	KY	204	20.27	852	23.8
6	Progress Energy Florida	Crystal River	Central Appalachia	KY	114	19.08	829	23.0
7	Progress Energy Florida	Crystal River	Central Appalachia	KY	171	18.97	829	22.9
8	Lakeland Dept of Electric Water Utilities	C D McIntosh Jr	Central Appalachia	VA	18	19.28	847	22.8
9	Orlando Utilities Commission	Stanton Energy Center	Central Appalachia	KY	30	19.27	860	22.4
10	Progress Energy Florida	Crystal River	Central Appalachia	KY	38	19.28	871	22.1
11	Progress Energy Florida	Crystal River	Central Appalachia	VA	835	19.72	911	21.6
12	Gulf Power Co	Scholz	Colombia	NA-C	58	5.55	260	21.3
13	Progress Energy Florida	Crystal River	Central Appalachia	KY	262	18.22	869	21.0
14	Progress Energy Florida	Crystal River	Central Appalachia	KY	59	18.18	869	20.9
15	Progress Energy Florida	Crystal River	Central Appalachia	KY	67	17.85	861	20.7
16	Progress Energy Florida	Crystal River	Central Appalachia	KY	116	18.21	884	20.6
17	Orlando Utilities Commission	Stanton Energy Center	Central Appalachia	KY	51	17.37	869	20.0
18	Gulf Power Co	Scholz	Colombia	NA-C	22	5.19	260	20.0
19	Progress Energy Florida	Crystal River	Central Appalachia	KY	10	17.48	880	19.9
20	Lakeland Dept of Electric Water Utilities	C D McIntosh Jr	Central Appalachia	KY	67	19.06	960	19.9
21	Progress Energy Florida	Crystal River	Central Appalachia	KY	96	16.66	852	19.6
22	Progress Energy Florida	Crystal River	Central Appalachia	KY	49	16.57	852	19.4
23	Progress Energy Florida	Crystal River	Central Appalachia	KY	127	16.54	852	19.4
24	Progress Energy Florida	Crystal River	Central Appalachia	KY	19	16.44	852	19.3
25	Orlando Utilities Commission	Stanton Energy Center	Central Appalachia	KY	589	16.71	871	19.2
26	Progress Energy Florida	Crystal River	Central Appalachia	KY	9	17.37	907	19.2
27	Gainesville Regional Utilities	Deerhaven Generating Station	Central Appalachia	VA	30	13.66	724	18.9
28	Lakeland Dept of Electric Water Utilities	C D McIntosh Jr	Central Appalachia	KY	597	16.99	902	18.8
29	Orlando Utilities Commission	Stanton Energy Center	Central Appalachia	KY	31	15.93	847	18.8
30	Progress Energy Florida	Crystal River	Central Appalachia	KY	195	16.56	895	18.5
31	Seminole Electric Coop Inc	Seminole (FL)	Illinois Basin	KY	882	15.32	836	18.3
32	Orlando Utilities Commission	Stanton Energy Center	Central Appalachia	KY	613	15.81	866	18.3
33	Orlando Utilities Commission	Stanton Energy Center	Central Appalachia	KY	208	16.59	929	17.9
34	Seminole Electric Coop Inc	Seminole (FL)	Illinois Basin	IL	100	15.32	899	17.2
35	Seminole Electric Coop Inc	Seminole (FL)	Illinois Basin	IL	1,178	15.32	899	17.2
36	Cogentrix Power Holdings LLC	Cedar Bay Generating Co LP	Central Appalachia	KY	995	12.61	743	17.0
37	Gulf Power Co	Scholz	Central Appalachia	KY	106	13.27	791	16.8
38	Progress Energy Florida	Crystal River	Central Appalachia	KY	38	13.87	829	16.7
39	Progress Energy Florida	Crystal River	Central Appalachia	KY	19	14.97	895	16.7
40	Progress Energy Florida	Crystal River	Central Appalachia	KY	116	13.85	829	16.7
41	JEA	St Johns River Power Park	Central Appalachia	KY	10	15.94	955	16.7
42	JEA	St Johns River Power Park	Central Appalachia	KY	28	15.94	955	16.7
43	Progress Energy Florida	Crystal River	Central Appalachia	KY	20	14.29	857	16.7
44	Progress Energy Florida	Crystal River	Central Appalachia	KY	18	14.35	861	16.7
45	Progress Energy Florida	Crystal River	Central Appalachia	KY	39	14.83	895	16.6
46	Progress Energy Florida	Crystal River	Central Appalachia	VA	2	15.06	911	16.5
47	Progress Energy Florida	Crystal River	Central Appalachia	KY	97	14.69	895	16.4
48	Gainesville Regional Utilities	Deerhaven Generating Station	Central Appalachia	VA	10	11.71	724	16.2
49	Progress Energy Florida	Crystal River	Central Appalachia	KY	185	17.05	1,056	16.1
50	Progress Energy Florida	Crystal River	Central Appalachia	KY	18	13.1	821	16.0
51	Progress Energy Florida	Crystal River	Central Appalachia	KY	9	13.47	845	15.9
52	Progress Energy Florida	Crystal River	Central Appalachia	KY	28	12.99	819	15.9
53	Gulf Power Co	Crist	Illinois Basin	IL	101	9.6	607	15.8
54	Gulf Power Co	Scholz	Central Appalachia	KY	20	12.51	791	15.8
55	Orlando Utilities Commission	Stanton Energy Center	Central Appalachia	KY	81	13.17	834	15.8
56	JEA	St Johns River Power Park	Northern Appalachia	WV	57	19.01	1,206	15.8
57	Progress Energy Florida	Crystal River	Central Appalachia	KY	88	13.84	880	15.7
58	Progress Energy Florida	Crystal River	Central Appalachia	KY	330	16.57	1,056	15.7
59	Progress Energy Florida	Crystal River	Central Appalachia	KY	88	16.54	1,056	15.7
60	Gainesville Regional Utilities	Deerhaven Generating Station	Central Appalachia	KY	395	12.35	800	15.4
61	Gainesville Regional Utilities	Deerhaven Generating Station	Central Appalachia	KY	82	12.33	800	15.4
62	Delta Power Services LLC	Central Power & Lime Inc	Central Appalachia	KY	392	15.52	1,014	15.3
63	JEA	St Johns River Power Park	Northern Appalachia	PA	93	18.08	1,205	15.0
64	JEA	St Johns River Power Park	Central Appalachia	KY	285	11.06	738	15.0
65	JEA	St Johns River Power Park	Central Appalachia	KY	286	14.1	945	14.9
66	Seminole Electric Coop Inc	Seminole (FL)	Northern Appalachia	WV	465	15.96	1,161	13.7
67	Orlando Utilities Commission	Stanton Energy Center	Central Appalachia	KY	269	14.28	1,061	13.5
68	Orlando Utilities Commission	Stanton Energy Center	Central Appalachia	KY	246	14.21	1,061	13.4
69	Seminole Electric Coop Inc	Seminole (FL)	Northern Appalachia	WV	484	15.96	1,247	12.8
70	Lakeland Dept of Electric Water Utilities	C D McIntosh Jr	Central Appalachia	KY	20	11.46	902	12.7

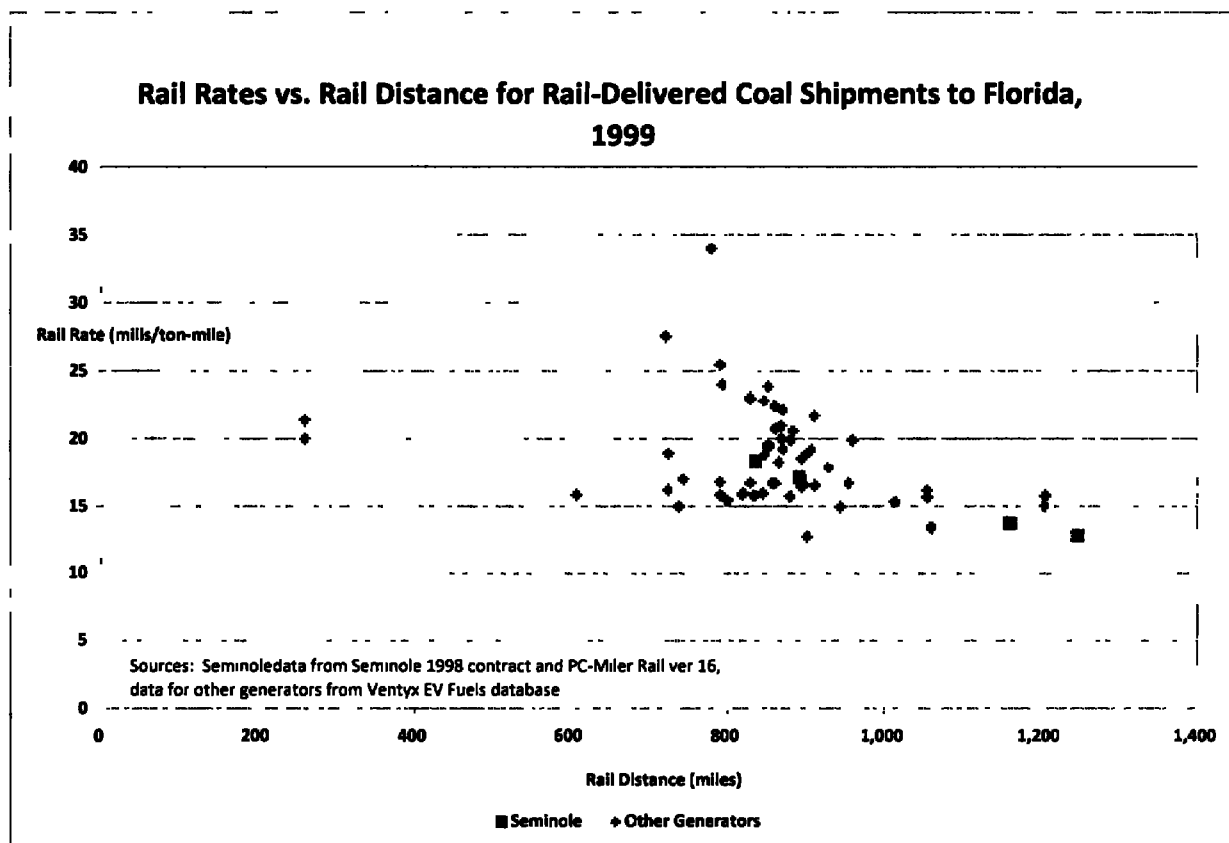
Note

Mill per ton mile rates shown for Seminole in this exhibit are based on the contract rail rates applicable to each coal shipment as of 1Q1999, and rail distances calculated using PC-Miler Rail ver 16 software

All other data in this Exhibit is from the Ventyx EV Fuels database

Table II-B-2, below, displays the Ventyx data graphically, to show the array of rates by distance. Again, nothing in the data suggests that SECI's base contract rates were low as compared to other Florida movements of similar distances.<sup>40</sup>

**Table II-B-2**



Reprising a point that it sought to raise earlier in this proceeding,<sup>41</sup> CSXT next argues that the challenged rates are “consistent with contractual and commercially

<sup>40</sup> Indeed, the fact that CSXT did not have to proffer any discount from its then-prevailing rate structure in order to secure the all-rail movement accents the ineffectiveness of waterborne transportation as a meaningful constraint on CSXT's rates for service to SGS.

<sup>41</sup> See Defendant CSX Transportation Inc.'s Reply to Petition for Injunctive Relief, October 17, 2008 at 16-17.

developed rates” put in place by the carrier for other coal movements into Florida. CSXT  
Reply at II-22-23. {

}

It is well established that a comparison of challenged rates to rates paid by other shippers is completely irrelevant to a determination of the reasonableness of the challenged rates under the *Coal Rate Guidelines* and the Board’s Constrained Market Pricing model. *See Coal Rate Guidelines, Nationwide*, STB Ex Parte No. 347 (Sub. No. 1) (STB served May 23, 1990) at 1. *See also Federal Power Commission v. Texaco*, 417 U.S. 380, 394 (1974) (where statute required that rates be “just and reasonable,” agency could not use estimates of “market” rates as a determinant). If the rates set by CSXT for coal service to SGS are shown to be higher than those necessary for CSXT to earn a fair return on the cost of the facilities needed to serve SECI, how

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<sup>42</sup> CSXT Reply Tables II-B-1 and II-B-2.

<sup>43</sup> {  
  
}



those rates compare to rates that other shippers (for whatever reasons) have agreed to pay is of no consequence. *WFA/Basin II* at 2.

A true comparison of the issue rates to transportation rates set by CSXT on other coal movements to Southeastern destinations *is* instructive with regard to another issue, however; namely, CSXT's market power over coal transportation to SGS.

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**Table II-B-3**

**Rail Transportation Rates to Florida Utilities -- 2008  
Seminole Deliveries at 2009 Tariff Rates<sup>44</sup>**

Utility	Plant	Tons	Avg. Rate	Mills/Ton-Mile
Lakeland	McIntosh	{ }	{ }	{ }
Progress Florida	Crystal River	{ }	{ }	{ }
Gainesville	Deerhaven	{ }	{ }	{ }
Gulf Power	Scholz	{ }	{ }	{ }
Orlando Utilities	Stanton	{ }	{ }	{ }
Seminole Electric	SGS	{ }	{ }	{ }

Two related conclusions may be drawn from the foregoing data. {

} The ability

to engage in this sort of price discrimination is a classic example of monopoly power.

*Coal Exporters Association v. United States*, 745 F.2d 76, 91-93 (D.C. Cir. 1984), citing  
2 P. AREEDA & D. TURNER, ANTITRUST LAW 342, and other authorities.

**2. CSXT's Claim of Alleged Barge Competition is  
Contradicted by Its Own Prior Sworn Testimony**

This case is not the first formal regulatory proceeding in which CSXT has  
addressed the issue of SGS captivity to CSXT rail service. In 2004, CSXT appeared

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<sup>44</sup> Source: SECI Rebuttal e-workpaper "CSXT Fla.Rates.pdf."

<sup>45</sup> { }

before the FPSC<sup>46</sup> to challenge the prudence of a decision by Tampa Electric Company (“TECO”) to use waterborne transportation for coal moving to its Big Bend Station, in lieu of CSXT all-rail service. CSXT’s principal expert witness in the proceeding was the late Dr. Robert Sansom, formerly the President of EVA, the same consulting firm retained by CSXT in this case to advocate the alleged existence of barge competition for coal deliveries to SGS.<sup>47</sup> The purpose of Dr. Sansom’s testimony to the FPSC was to question the prudence of TECO’s election to transport coal by water instead of rail. Therein, on behalf of CSXT, Dr. Sansom repeatedly emphasized the purported superiority of CSXT rail service -- in terms of operational efficiency and cost effectiveness -- over barge or other waterborne transportation as a means of moving coal to utilities in Florida. *See, e.g., Sansom* at 6, 13, 15, 34.

Dr. Sansom also specifically addressed the matter of coal transportation to SGS. Contrasting SECI’s transportation arrangements with those selected by TECO, CSXT’s witness clearly and objectively<sup>48</sup> described SGS as a coal destination without an effective, competitive alternative to rail service:

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<sup>46</sup> FPSC Docket No. 031033-EI, *In Re: Review of Tampa Electric Company’s Waterborne Transportation Contract with TECO Transport and Associated Benchmark*.

<sup>47</sup> Dr. Sansom did not appear in a video. However, he did submit direct, sworn written testimony to the FPSC, a copy of which is included in SECI’s workpapers. In preparing his testimony, Dr. Sansom was assisted by Mr. John Stamberg of EVA, who now appears as a sponsoring witness for CSXT in this case. *See* SECI Rebuttal e-workpaper “Sansom Testimony.pdf” (“*Sansom*”) at 38.

<sup>48</sup> Unlike in this proceeding, before the FPSC CSXT and its consultants had nothing to gain by characterizing SECI’s transportation circumstances in any manner other than consistent with reality. The focus of that proceeding -- and CSXT’s focus --

“Q. What is Seminole’s situation and approach?

A. Seminole has a rail-served plant at Palatka, Florida. In 2002 and 2003 Dotiki coal delivered by rail cost Seminole’s members less than Dotiki coal delivered by barge to Big Bend. This is shown in the table below and demonstrates that CSXT’s service to Palatka, *which does not enjoy rail/barge competition*, is more efficient and cost effective by a wide margin for Seminole’s members than TECO’s water route to Big Bend is to TECO’s ratepayers.”

(*Sansom* at 14) (emphasis supplied).

“Q. What, if anything, is noteworthy about this?

A. This is noteworthy because it demonstrates substantial cost savings via rail *even though Seminole is captive to the CSXT rail system and Big Bend could have rail/water competition.*”

(*Id.* at 15) (emphasis supplied).<sup>49</sup>

Before the Board, CSXT and EVA now posit a hypothetical barge coal delivery system which they admit does not exist, but which they claim can be created for a cost that results in its representing “effective competition” for the CSXT rail service that has delivered virtually every ton of SGS coal since the mid-1980s. In the following sections of this Part II-B, SECI demonstrates that there are physical, operational and regulatory barriers which would preclude the construction and use of facilities and infrastructure essential to the use of this “option,” and that the cost estimates now offered

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were the decisions made by TECO, and the only benefit sought by CSXT was a ruling that TECO’s election of water transportation had been imprudent.

<sup>49</sup> Dr. Sansom’s testimony and opinion were accepted by the FPSC, and helped form the basis of its ruling regarding the prudence of TECO’s decision to choose water transportation over rail. See SECI Rebuttal e-workpaper “FPSC-TECO.pdf” at 9, 11, 21.

by EVA are significantly understated and, in some cases, omit key elements altogether.<sup>50</sup> SECI submits, however, that the dispositive words already have been spoken by CSXT and its retained consultants before the FPSC: SGS does not enjoy effective rail/barge competition. *Sansom* at 14.

**3. Barge Transportation Does Not Present an Effective Competitive Alternative to CSXT Rail Service to SGS**

From an evidentiary standpoint, CSXT's claim that SECI's coal requirements could be transported to SGS predominantly via a river, ocean and/or coastwise vessel system that would not involve CSXT and was economically competitive with CSXT principally rests upon an analysis of this "option" offered by EVA's Messrs. Schwartz and Stamberg.<sup>51</sup> Contrary to Dr. Sansom's prior testimony to the FPSC, these EVA consultants opine that CSXT's single carrier all-rail service from the subject origins to SGS can be matched at a lower overall cost by, alternatively, an *eight (8) step* rail/truck-river barge-ocean barge-river barge transport chain from origins in the Illinois Basin,<sup>52</sup> or a *five (5) step* rail-ocean barge-river barge chain from origins in Northern Appalachia. Neither chain, nor the considerable infrastructure needed to support it, actually exists and is available for use today. However, CSXT and EVA assume these

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<sup>50</sup> For example, Dr. Sansom testified to the FPSC that in estimating the cost of waterborne coal deliveries it was necessary to add \$2.00 per ton (in 2004 dollars) to account for the heat value lost due to handling and the additional moisture that the coal absorbs over the much longer journey by water, as compared to rail. *See Sansom* at 23, 34-35.

<sup>51</sup> CSXT Reply Exhibit II-B-2 ("*EVA Report*").

<sup>52</sup> SECI's two (2) principal coal sources, the Dotiki Mine in Western Kentucky and the Pattiki Mine in Southern Illinois, are located in the Illinois Basin.

hypothetical systems' viability, and allege support for that viability in the 2003 Initial Draft *Waterborne Fuel Delivery System Study* prepared by Bulk Terminals Group LLC ("2003 BTG Draft"),<sup>53</sup> which was referenced in SECI's Opening Evidence.<sup>54</sup>

As explained below, the hypothetical water transport system proposed by EVA relies on key components that currently either are non-existent and operationally impractical (if not impossible) -- such as the transfer of coal from ocean barges to river barges in unprotected open ocean, or are infeasible to construct in the first place -- such as a coal barge dock and conveyor on the St. Johns shoreline near SGS. Moreover, even if these prohibitive obstacles are assumed away, the likely actual cost to SECI to use the EVA "options" conservatively would exceed at least { } per ton, and would have no constraining influence on CSXT's pricing. Similarly, CSXT's case is not advanced by the 2003 BTG Draft, {

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As a threshold matter, CSXT ascribes an ulterior motive to SECI's designation of the 2003 BTG Draft as "Highly Confidential" under the governing protective order, and extrapolates from that the notion that SECI concluded that water delivery of coal to SGS is a "very real and very viable option." CSXT Reply at II-24-25. SECI did not designate the report in order to "keep the results secret from CSXT

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<sup>53</sup> *EVA Report* at 15-22. The 2003 BTG Draft is included in CSXT's Reply e-workpapers as "SECI-004777."

<sup>54</sup> SECI Opening at II-11-12.

personnel”<sup>55</sup> -- it is discussed openly in SECI’s Opening Narrative. The draft itself was considered proprietary because it contained data developed by BTG using proprietary models and methods, and information obtained by BTG from vendors and other third parties based on representations of confidentiality, from which (to SECI’s knowledge) BTG has not been released. SECI’s motive was cautionary, not sinister.

Moreover, if the 2003 BTG Draft truly was as potent as CSXT claims (a matter addressed in further detail, below), SECI would have been eager to present its contents to CSXT business personnel in the course of the parties’ negotiations. CSXT speculates that SECI has attempted to hide the existence of a viable competitive option “in hopes that it can obtain a better rate from the Board,”<sup>56</sup> but this is as illogical as it is counter-factual. As SECI’s Opening Narrative makes clear, it has not sought to “hide” at all the fact that it investigated whether any effective alternatives to CSXT delivery service are available (they are not). And the outcomes of most prior rail coal rate proceedings<sup>57</sup> confirm that expensive and time-consuming regulatory rate litigation is a last resort for captive coal shippers, not a preferred option, a fact which the Board has acknowledged. *See Market Dominance Determinations -- Product and Geographic Competition*, 2001 WL 320531\*5 n. 16 (“[s]hippers are not likely to pursue a rate complaint when faster, less costly and more effective self-help is available in the marketplace....”).

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<sup>55</sup> *Id.* at II-25 n. 29.

<sup>56</sup> CSXT Reply at II-50.

<sup>57</sup> *See, e.g., AEP Texas; Otter Tail; Duke/CSXT; CP&L.*

On behalf of SECI, BTG and Hellerworx, Inc. each have analyzed the *EVA Report*, its assumptions and claims regarding the feasibility of the 8-step and 5-step transport chains for St. Johns River barge deliveries to SGS,<sup>58</sup> and its estimates of the cost of this hypothetical transport system. Their reports appear as SECI Rebuttal Exhibits II-B-1 and II-B-2. Together, they demonstrate that there are certain fundamental, practical obstacles to the execution of EVA's complex plan which preclude its feasibility entirely. Moreover, even if one assumes away these fatal, practical flaws, the actual cost to SECI to use the systems that EVA proposes would be well above {        } per ton. To be sure, given the definition of "effective competition" reflected in CSXT's arguments,<sup>59</sup> it is quite possible that the carrier simply would view this evidence as a license to raise SECI's rates up to those still higher levels. As a matter of market dominance jurisprudence, however, it cannot seriously be viewed as imposing any meaningful constraint on CSXT's pricing. *Arizona Public Service Co. v. United States*, 742 F.2d 644, 651 (D.C. Cir. 1983).

As BTG explains, two of the key components of the EVA scheme which would entail massive new capital investments -- the transfer of coal from ocean vessels to

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<sup>58</sup> Despite the confusion that CSXT apparently is attempting to sow on the question (*see* CSXT Reply at II-26-27), SECI has never suggested that the St. Johns River is a "navigable waterway." What SECI has stated, and what is clearly established by the facts, is that the St. Johns is not a waterway that feasibly can be used to transport millions of tons of coal each year for delivery to SGS, due, *inter alia*, to the impracticality (or impossibility) of constructing a barge unloading facility on the river, and the lack of facilities to enable the transfer of coal from ocean vessel to river barge at Jacksonville. *See* SECI Opening at II-11-12; Rebuttal Exhibit II-B-1 at 3-12, 22-31.

<sup>59</sup> *See, e.g.*, CSXT Reply at II-22-23.



river barges at Jacksonville, and the construction and operation of a large coal barge unloading dock and conveyor system on the riverbank near SGS -- are fraught with obstacles that preclude reliance on this hypothetical system as an effective alternative to CSXT rail delivery. Among the serious flaws addressed in detail are:

\* EVA contemplates a “midstream” transfer operation<sup>60</sup> at Jacksonville, even though there are no waters within the harbor area that are accessible by the 36-37 foot draft ocean vessels that EVA assumes, that could offer a protected fleeting area for river barges. Rebuttal Exhibit II-B-1 at 21-22.

\* EVA proposes that coal could be transferred from an ocean barge anchored in the Atlantic Ocean to river barges, using floating cranes. *EVA Report* at 28. However, the cranes and barges proposed by EVA are too small and not certified for open ocean operation,<sup>61</sup> and an ocean transfer to river barges is unprecedented and unsafe, as even average ocean sea states easily could swamp the loaded barges. Exhibit II-B-1 at 24, 26-27.

\* EVA proposes that river barges would be fleeted awaiting loading near Floral Bluff at Jacksonville. *EVA Report* at 8. However, this is some 23 miles away

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<sup>61</sup> *Id.* at 27-28.

from the point of anchorage for the incoming ocean barges, far too distant to be practical for an ocean discharge and transfer. Rebuttal Exhibit II-B-1 at 28-29.

\* EVA unrealistically assumes a transfer rate for its (too small) cranes that is equal to the crane's design rate. *EVA Report* at 28. However, as BTG shows, no crane can perform at such a rate, because the quantity scooped out of a ship's hold and the efficiency of the operation degrades with each transfer, as it becomes harder to lift a full bucket, and bulldozers have to be employed to push the remaining coal into piles for transfer. An actual transfer rate is closer to 50% of design capacity. Rebuttal Exhibit II-B-1 at 13-14, 23, 31-33. This error alone (which is repeated at each step in the EVA chain where a crane is involved) means that EVA has not provided for sufficient equipment (vessels, tugs, barges, etc.) or labor to handle its assumed volumes. *Id.* at 14-15, 33.

\* EVA's assumptions concerning dock and conveyor construction near SGS give no regard to the residential character of the entire area, or the presence of critical habitat for the Florida manatee. *Id.* at 3-11.<sup>62</sup>

\* EVA's erroneous assumptions concerning crane transfer rates and maximum berth times for a barge at dock mean that even the large dock facility that it (unreasonably) assumes could be built near SGS would be inadequate to handle the volumes in question. *Id.* at 11-12.

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\* EVA's unorthodox river tow configuration (one tug per barge) requires the consultants to ignore very real features of river navigation that compel actual operators to seek offsetting efficiencies through larger configurations, including fog, bad weather, river traffic and recreational river use, and manatee encounters. The result is that EVA's assumed rates of transit are unrealistic for the volumes involved. *Id.* at 19.

\*EVA's coal dock construction project and subsequent operation would require extensive dredging of the river to establish a new branch channel from the main channel to the shore. While EVA includes a one-time cost for dredging,<sup>63</sup> it makes no provision for disposal of the spoils, and no provision for periodic re-dredging to keep the new channel open. *Id.* at 10-11. Both have serious environmental impact implications as well, which EVA likewise ignores. *See* II-57-70, *infra*.

The analysis conducted by Hellerworx (with some collaborative support from BTG) demonstrates that even if all actual, physical, operational and regulatory obstacles to the EVA system's practicality are assumed away, CSXT's consultants have dramatically underestimated the costs of various links in their alternative transport chains, such that the cost to SECI to use the EVA system (if it could be built) would be considerably higher than even the exorbitant CSXT rates under challenge here. Some of Hellerworx's principal conclusions are:

\* SECI could not reasonably and practically avoid the costs of transporting coal from alternative mines to river points, as CSXT and EVA speculate.<sup>64</sup> The basis for

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<sup>63</sup> *EVA Report* at 24.

<sup>64</sup> CSXT Reply at II-32-33; *EVA Report* at 11-13.

that speculation – {

}. *See* Rebuttal Exhibit II-B-2 at 8-10.

\* EVA assumes without support that contract barge rates for river transport from Illinois Basin terminals to New Orleans would settle {

}. *EVA Report* at 13. In a rising market, such as has characterized the recent past, contract barge rates will tend toward { } and can even exceed it. Rebuttal Exhibit II-B-2 at 12-14.

\* EVA bases its estimated cost of the transfer of coal between river and ocean barges at New Orleans on the wholly unreasonable assumption that a midstream transfer could be accomplished precisely and without delay on a regular basis, with no accounting for weather, equipment issues or congestion, all of which routinely lead to the incursion of demurrage fees. *Id.* at 14-16. These risks are exacerbated by increased volumes,<sup>65</sup> which Hellerworx points out can lead to a “cascading” of delays and attendant cost, none of which are accounted for by EVA.

\* For Northern Appalachia coal that EVA posits would travel to Atlantic ports for coastwise movement to Jacksonville (the 5-step chain), CSXT’s consultants suggest that CSXT itself would offer {

}. *EVA Report* at 14-15. There certainly is no basis to assume that {

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<sup>65</sup> Indeed, as Hellerworx notes, the two major utilities that transfer coal between river and ocean or gulf barges at New Orleans use fixed terminals with storage facilities rather than midstreaming.

} . Rebuttal

Exhibit II-B-2 at 17. EVA's assumption of some degree of active competition between CSXT and NS for this traffic likewise is without foundation; evidence indicates that the two carriers tend to behave as duopolists on coal traffic, and NS rates are consistently higher even than CSXT's on a general basis. *Id.* at 18.

\* EVA has dramatically understated the loading and unloading times for ocean vessels bound for Jacksonville, as well as the capital costs that SECI would incur in building and supplying the necessary equipment (another EVA assumption). *Id.* at 19-23. Because of its unrealistic assumption that a transfer crane's operating rate equals its design rate, and its overly optimistic cycle time projections, EVA has overestimated the tons that could be delivered using the equipment that its plan contemplates. *Id.* at 19-20 and Exhibit HW-10. EVA also understates the capital costs associated with ocean barge-related investments by relying on a 2003 "fixed charge factor" that bears no relation to actual, current capital costs for investments in maritime equipment. *Id.* at 20-22. These two errors alone result in an understatement of total transportation costs by EVA of between { } per ton for Illinois Basin coal, and { } per ton for Northern Appalachian coal. *Id.* at 19.

\* As noted *supra* and explained by BTG, the plan to rely on the open ocean transfer of coal between ocean and river barges at Jacksonville effectively dooms the feasibility of EVA's overall transport scheme. Even if that flaw is assumed away, however, EVA's unrealistic assumptions regarding crane transfer rates and its failure to

account at all for costs associated with normal fleeting and transfer operations lead to an understatement of transfer costs on the order of close to 100%. *See* SECI Rebuttal Exhibit II-1 at 39; SECI Rebuttal Exhibit II-B-2 at 25-26. The slower coal transfer rates also affect the cost of barge transportation to the hypothetical SGS dock. *Id.* at 27.

\* EVA completely ignored costs associated with coal degradation, which occurs through the long exposure of waterborne coal to the elements and the repeated transfers of each shipment en route (8 transfers in the case of EVA's Illinois Basin plan). EVA's own past president, Dr. Sansom, testified in detail regarding these cost -- which are not incurred on all-rail shipments -- in his 2004 appearance before the FPSC. Applying Dr. Sansom's methodology in the context of current conditions and SECI coal specifications leads to a calculated cost of {

} both of which are conservative

given that EVA's hypothetical transport schemes involve considerably more handling than the movement analyzed by Dr. Sansom.

When the cost understatements identified by Hellerworx and BTG are applied to EVA's calculated total transport rates, the costs of the EVA water "option" would be between *at least* {

} even assuming away the many obstacles

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<sup>66</sup> Rebuttal Exhibit II-B-2 at 31-32.

<sup>67</sup> {

to its implementation -- several of which are completely disqualifying. The lack of effective barge competition is apparent even before consideration of property limitations and regulatory obstacles.

As to the first, CSXT gives short shrift to the highly consequential question of just where one could construct a river barge dock, unloading facility, and overland conveyor to deliver waterborne coal to SGS. Noting that SECI owns a 4.5 acre parcel of land along the river and holds easements for a road and pipelines between that parcel and SGS, CSXT simply assumes that the 4.5 acre parcel “could accommodate a dock to receive barge shipments,” and that the easements could be expanded through purchase or the exercise of eminent domain, sufficiently to allow for construction of a conveyor. *See* CSXT Reply at II-29-30. CSXT is wrong on all counts.

The riverside land parcel that SECI owns is completely occupied by an above-ground pump house and related equipment, and underground pipelines for water intake and wastewater discharge. These are the only uses of this parcel approved under the original SGS site certification issued by the State of Florida.<sup>68</sup> Complete and unfettered access to all these facilities must be maintained on an ongoing basis for maintenance, testing and monitoring purposes, which means, *inter alia*, that nothing else can be constructed on or over these facilities. Additionally, no dredging or barge unloading operations can be conducted in close proximity to the water intake pipes, due

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<sup>68</sup> *See* SECI Rebuttal e-workpaper “SGS Intake Structure.pdf”.

to the unacceptable risk of silt and debris becoming suspended in the water and finding its way into the pipe and eventually the cooling water systems for each of the plant units.<sup>69</sup> Simply put, there is no room on the land that SECI owns for a new, large river barge dock and conveyor structures.

Similarly, the road and pipeline easements that SECI holds cannot be used to support an overland conveyor. The road easement is non-exclusive and for vehicular traffic only; nothing in its terms suggests that it can be used for a coal conveyor.<sup>70</sup> Likewise, the pipeline easement specifically describes underground structures only; an overland conveyor is not among the permitted uses.<sup>71</sup>

Any expansion of the 4.5 acre parcel to accommodate a dock and related structures is precluded by the residential properties (several of which include private boat slips) which border the SECI parcel on both sides. As shown on Figures II-B-1-5, below, these fully developed properties define the residential character of the entire area.<sup>72</sup> CSXT did not address this impediment, as it and its consultants apparently and erroneously assumed that the dock, bridge and related facilities simply could be built on

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<sup>70</sup> See CSXT Reply e-workpaper “SECI Road Easement. pdf.”

<sup>71</sup> See CSXT Reply e-workpaper “SECI Amended Pipeline Easement.pdf.”

<sup>72</sup> Additional photographs are included in Rebuttal WP “St. Johns Property Photos. jpg”. Images of these residential properties are conspicuously missing from CSXT’s evidence and video.



top of the pump house and underground pipelines. However, the facts are that this very real land constraint rules out the practicality of dock construction (and, thus, barge transportation) at the outset,<sup>73</sup> before it is even necessary to consider the practical, economic and regulatory obstacles addressed *infra*.

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<sup>73</sup> The close proximity of residential development to any hypothetical site for a major coal unloading and transfer terminal also has dispositive relevance with respect to the noise, air and water impact issues that would be prominent in any permitting effort. The SGS water intake/discharge facilities, in contrast, are largely underground (or underwater), and operate without anything close to the level of noise, fugitive dust dispersion and river use disruption that a coal barge dock would involve.

Figure II-B-1



Wayne McClain Estate, located west of SGS plant access road and within one mile east of water intake structure.

Figure II-B-2



New residence directly across from SGS access road and less than 0.75 miles east of water intake structure.

Figure II-B-3



Harris George residence, approximately 100 yards east of water intake structure.

Figure II-B-4



Private residential docks immediately adjacent to SGS riverside property.

Figure II-B-5



Entrance to Charles Smith property across street and just northwest of water intake structure.

While CSXT does appear to recognize the limitations of SECI's road and pipeline easements insofar as installation of an overland conveyor is concerned, it brushes them aside with a reference to the 2003 BTG Draft that implies some serious study of SECI's ability to negotiate amendments or buy additional land outright. *See* CSXT Reply at II-29. However, examination of the actual text of the portion of the Draft identified by CSXT shows that {

} Likewise, and in contrast to CSXT's characterization, BTG { } as a placeholder purchase price for additional land for a conveyor corridor. Such reeds are too thin to support a finding of *bona fide*, physical feasibility. *Cf. Wisconsin P&L* at 962-963. *See also Burlington N. R. R. Co. v. Surface Transportation Board*, 114 F. 3d 206, 211-12 (D.C. Cir. 1997).

CSXT's ultimate answer to the lack of available real estate for barge/conveyor construction appears to be that SECI could simply "acquire [the] property by eminent domain." *See* CSXT Reply at II-29-30. Here again, however, CSXT's claim rests on an overly simplistic assumption.

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<sup>74</sup> Elsewhere in the 2003 BTG Draft {

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While SECI has been found to be a “non-profit rural cooperative” entitled to invoke rights under Florida’s eminent domain statute (F.S.A. § 425.04),<sup>75</sup> its power is circumscribed by the operative statutory language, which states that a “rural electric cooperative” shall have the authority “to exercise the power of eminent domain in the manner provided by the laws of this state for the exercise of that power by corporations *constructing or operating electric transmission and distribution lines or systems.*” F.S.A. § 425.04 (12) (emphasis supplied). Under Florida law, the eminent domain statute is “strictly construed against the agency asserting the power of eminent domain.” *Pichowski v. Florida Gas Transmission Co.*, 857 So. 2d 219, 220 (Fla. App. 2003). It certainly cannot be assumed that a barge dock and overland conveyor would be considered “electric transmission and distribution lines or systems” under a strict construction of F.S.A. § 425.04 (12).

Considerable doubt also exists whether SECI could make the required showing of a “reasonable necessity” for a taking,<sup>76</sup> assuming *arguendo* that a dock and conveyor even technically fell within the scope of SECI’s statutory authority. Among the factors to be considered are “cost, environmental factors, long-range planning, safety considerations and the *existence of alternative routes.*” *Rawls*, 974 So. 2d at 547 (emphasis supplied); *Hillsborough County v. Sapp*, 280 So. 2d 443, 445 (Fla. 1973). Facilities for the transportation of coal to SGS already are in place, and the Florida courts

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<sup>75</sup> See *Seminole Elec. Coop., Inc. v. Dept. of Env. Protection*, 985 So. 2d 615, 617 (Fla. App. 2008).

<sup>76</sup> *Rawls v. Lean County*, 974 So. 2d 543, 546 (Fla. App. 2008).



are skeptical of eminent domain petitions that would take property for a purpose (here, coal transportation) that already is or could be served by an alternative route or facility. *See Hodges v. Jacksonville Transp. Auth.*, 353 So. 2d 1211, 1214 (Fla. App. 1977).

**4. The Use of Water Transportation by Other Florida Utilities is Irrelevant**

The extent to which other electric utilities located in the State of Florida can or do rely on waterborne coal deliveries<sup>77</sup> is irrelevant to the question of CSXT's market dominance over coal transportation to SGS. SECI's generation facilities are not located at the same sites as those of the other utilities referenced by CSXT in its Reply, nor are they connected to those sites by any viable, non-rail transportation mode. As with its prior foray into a comparison of delivered coal costs into Florida,<sup>78</sup> CSXT may be implying that SECI somehow benefits from competition enjoyed by *other* utilities, so long as CSXT allows coal to be delivered to SGS at a comparable overall cost. As SECI already has shown, however, such a comparison is invalid for market dominance purposes, and masks the actual exercise of true market power evidenced in CSXT's ability to take for itself the economic rents made available by SECI's relatively favorable minemouth coal prices.

CSXT cites *Aluminim Assoc. v. Akron, Canton & Youngstown R.R. Co.*, 367 ICC 475, 483 (1983) to argue that it does not matter for market dominance purposes whether SECI actually has used any means other than CSXT for coal deliveries to SGS.

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<sup>77</sup> CSXT Reply at II-34-37.

<sup>78</sup> CSXT Reply at II-22-23.

CSXT Reply at II-37. However, in that case the “unused” alternatives -- motor carriage and intramodel rail competition -- actually existed, and there was an historical record not only of their availability, but of their being utilized by the complaining shipper for related products, and by its end-use customers. There is a vast difference between an effective option that is at hand, available, and has been used verifiably to produce a rate response by a railroad, and a hypothetical alternative<sup>79</sup> that not only has not been used, but previously was denigrated generally by the railroad’s own consultant, and confirmed as ineffective specifically with respect to the issue traffic. *See Sansom* at 14-15. CSXT and its witnesses publicly pronounced Seminole “captive” in 2004, and CSXT has treated SECI just that way in setting the rates at issue. In stark contrast to the complainants in *Aluminum Assoc., supra*, SECI has not availed itself of alternatives to CSXT because those alternatives simply do not exist.

**5. SECI’s Existing Coal Supply Arrangements  
Restrict Its Source Options**

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<sup>79</sup> As the Board has held previously in related contexts, the true measure of the feasibility of an alleged, pro-competitive construction option is whether it actually is built. *See CSX Corp., Et Al. -- Control -- Conrail, Inc., Et Al.*, 3 S.T.B. 196, 319 n. 179 (1998); *accord Union Pacific Corporation, Et Al., -- Control and Merger -- Southern Pacific Rail Corporation., Et Al.*, 1 S.T.B. 233, 420 (1996).

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**6. Regulatory and Environmental Permitting Requirements Make Barge Deliveries to SGS Impractical or Impossible**

The only mention made by CSXT's consultants of the regulatory and permitting issues that would arise from EVA's hypothetical barge delivery system is a single reference to *another* utility's barge dock, which supposedly was permitted "in a similar environmentally sensitive area with extensive citizen and agency comment and scouting."<sup>83</sup> EVA includes no costs to cover attempted compliance with federal, state and local regulatory requirements, and CSXT itself seeks to downplay the regulatory and permitting approval obstacles that any project of the size and scope of EVA's proposed dock and conveyor system would face, by referencing two (2) cursory estimates of the cost of *seeking* such approvals,<sup>84</sup> and the experience of a shipbuilding facility on the St. Johns River in obtaining approvals for repair and maintenance. CSXT Reply at II-41. However, neither BTG nor the SECI personnel who initially explored the possibility of additional rail construction researched or opined on the likelihood of actually *receiving* necessary regulatory approvals, and the repair of an existing facility is far different from the construction of an entirely new one. In fact, the extensive regulatory hurdles and certainty of well-funded and persistent public and private party opposition -- including from CSXT itself -- make it extremely unlikely that a dock and conveyor system to displace CSXT rail service ever would be approved. Indeed, this conclusion contributed

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<sup>83</sup> CSXT workpaper "Design and Cost Estimate for a Coal Barge Unloading Dock and Conveyor System," at 1.

<sup>84</sup> CSXT Reply at II-42-43.

to SECI's determination not to proceed with further consideration of a barge "option" following receipt of the 2003 BTG Draft.

Assuming *arguendo* that adequate real estate space existed (which, as shown, it does not) construction and operation of a barge dock and conveyor such as that hypothesized by EVA would require at least the following regulatory actions:

- a. Amendment of Putnam County, Florida's future land use map to rezone land parcels adjacent to the river;
- b. Putnam County and Florida Department of Transportation authorization of the undercrossing or overcrossing of County Road 209 and the associated right-of-way by a coal conveyor;
- c. Authorization by the State Board of Trustees of the Internal Improvement Trust Fund for the use of sovereign state lands for those portions of the dock system that would be located in the river;
- d. Modification of the existing SGS site certification by the Florida Electrical Power Plant Siting Board;
- e. Issuance by the Florida Department of Environmental Protection of an air construction permit for new facilities, and a revision of the existing air operation and surface water discharge permits for SGS; and
- f. Issuance of a dredge and fill permit for facilities construction in the river, by the U.S. Army Corp of Engineers.

As discussed below, the degree of difficulty involved in obtaining all of the foregoing would be exacerbated by the certainty that local citizens, environmental groups and Florida commercial interests -- including CSXT -- would oppose the project.

**a. Putnam County Rezoning**

The real estate proximate to the existing SECI pump house and underground water intake and discharge facilities (where EVA suggests a dock could be

built) has been zoned by Putnam County as a “Planned Unit Development” or PUD, with the scope of permitted uses limited to the existing, certified generating station and associated facilities.<sup>85</sup> As a first step, therefore, SECI would have to secure an amendment of the permitted uses within the PUD to expressly include a coal barge unloading and conveyor system. Any such change of use requires enactment of an ordinance, which in turn means public notice and hearing.<sup>86</sup> The proposed use also must be consistent with the county’s comprehensive land use plan, which currently does not allow new industrial uses, such as a barge unloading dock.<sup>87</sup>

Any decision by the county to rezone and amend its comprehensive plan to allow a large coal barge dock and conveyor along the river would be a policy decision made by local elected officials, who would come under intense pressure from the nearby residential landowners<sup>88</sup> and other affected interests to deny the petitions. Large coal

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<sup>85</sup> See Putnam County, Fla. Ordinance 2006-02.

<sup>86</sup> Fla. Stat. §125.66.

<sup>87</sup> Approximately one-third of the existing SECI riverside parcel falls within the “rural residential” category. Industrial uses are expressly prohibited in such areas. See Putnam County Comprehensive Plan Policy A.1.9.3.A.4.d. The existing pump house and underground pipes previously were found to be in compliance with the comprehensive plan because those facilities existed prior to adoption of the plan. See *In Re: SECI Seminole Generating Station Unit 3 Power Plant Siting Application Number PA 78-10A2*, DOAH Case No. 06-0929 (Siting Board Dec. 8, 2006). A coal barge docking and delivery facility, however, is not reasonably comparable in scale and intensity of industrial use to the existing facilities located on the parcel of land designated “Rural Residential.”

<sup>88</sup> See SECI Rebuttal e-workpaper “St. Johns Property Photos.jpg”. Not surprisingly, CSXT’s “market dominance video” does not include any footage showing the residences and private docks adjacent to the existing SECI property, or any “interviews” with those residents.

barges do not currently dock anywhere on the river, much less near Palatka, and the audible and visual impacts of a riverside coal delivery facility operating, every day on the nearby homeowners would be vastly greater than those associated with the existing pump house and underground water pipelines. The necessary change in land use in this specific area would be viewed in the community as dramatic. In 2006, as part of the certification proceeding for the Seminole Generating Station Unit 3 electrical generating unit, the Sierra Club argued that the addition of a pump and underground pipeline to the same parcel that EVA suggests could be used for a riverside coal delivery facility was incompatible with the “overall character of the existing and future development of the area.” *In Re: SECI Seminole Generating Station Unit 3 Power Plant Siting Application Number PA 78-10A2*, DOAH Case No. 06-0929 (Siting Board Dec. 8, 2006). Seminole prevailed in that litigation only after demonstrating that the proposed facilities would not result in *any* discernible adverse impact to nearby residential development. It would not be possible to make such a demonstration with respect to a coal barge unloading and conveyor system.

An additional and potent source of opposition at this -- and every other stage -- of the applicable regulatory approval and permitting processes would be CSXT itself. While not acknowledged in its Reply, CSXT has a history of active litigation against its own customers in order to prevent them from accessing -- or trying to access -- alternative coal transportation services that would deprive CSXT of business. For example, in addition to its successful attack against TECO’s 2003 decision to move coal by water instead of rail, discussed *supra* (an attack which featured EVA President

Sansom testifying that SGS is captive to CSXT), CSXT intervened before the Florida Department of Environmental Protection (“FDEP”) in 1993, in opposition to Gainesville Regional Utilities (“GRU”). GRU was seeking FDEP approval to construct a new rail spur as a precursor to a larger project to pursue competitive rail access to NS’s rail system. CSXT protested the land use amendments that GRU required, and the project was defeated.<sup>89</sup> Similarly, in 1996-97, CSXT joined with environmental groups to oppose an application by Florida Power & Light Company (“FPL”) for a certificate to use an alternative fuel (called “orimulsion”) at its generating facility in Manatee County. The fuel had the potential to displace coal that would have been transported by CSXT. After intense lobbying and other interventions by CSXT, Florida’s Governor and cabinet members sitting as a Siting Board rejected FPL’s application.<sup>90</sup>

**b. County Road 209 Right-of-Way**

CSXT’s consultants simply assume that SECI would tunnel under County Road 209 in the course of conveyor construction. *See EVA Report* at 24.<sup>91</sup> However, any crossing of the county’s rights of way (over or under) would require approval of the Putnam County Public Works Department. *See Fla. Stat.* §§336.02, 316.006 (3). The County’s *Right-of-Way Use Permit* application only contemplates traditional utility accommodations (transmission lines, piping, etc.). Particularly in view of the landowner,

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<sup>89</sup> *See* SECI Rebuttal e-workpaper “GRU Protest.pdf.”

<sup>90</sup> *See* SECI Rebuttal e-workpaper “FPL Orimulsion.pdf.”

<sup>91</sup> EVA does not explain by what feat of engineering one could build a conveyor at riverside that would pass *over* the SGS pumphouse then sharply turn downward to pass *under* the nearby road.



commercial interest and CSXT opposition to the project that is certain to materialize, even this apparently modest permit process would present a formidable obstacle. The Florida Department of Transportation also would be involved in evaluating a proposed crossing, and particularly close scrutiny would be given to an undercrossing such as that proposed by EVA, given the risks of subterranean water contamination.

**c. Sovereign Submerged Lands Authorization**

The St. Johns River bottom is considered sovereign submerged land of the State of Florida, and as such is administered by a Board of Trustees, which consists of the Governor and his or her cabinet.<sup>92</sup> SECI would have to secure the Trustees' approval for all aspects of the dock and conveyor construction project which would impact the State's propriety land interest in the submerged river bottom. Approval cannot occur unless the site certification modification discussed *infra* first has been secured.

The decision to authorize the use of sovereign lands is discretionary, and the Trustees are required to consider comments and objections in response to requisite public notices, of which it is certain there would be many. Fla. Stat. §253.115(2). Sovereign lands are considered single use lands, and are managed primarily for the maintenance of essentially natural conditions, propagation of fish and wildlife, and traditional recreational uses. Fla. Admin. Code R. 18-21.004(2)(a). Any secondary use must not result in adverse impacts to sovereign lands and associated resources unless there is no reasonable alternative and adequate mitigation is proposed. *Id.* As SGS already has in place the physical facilities needed to deliver coal by rail, the “no

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<sup>92</sup> See Fla. Stat. §253.03 (1); Fla. Admin. Code R. 18-21.003 (61).

reasonable alternative” standard would not be met. Additionally, the political actors charged with responsibility for the decision are formally on record as being hostile to any new projects that would increase or enhance the use of coal in Florida. In a 2007 decision of which CSXT is fully aware, for example, the FPSC refused to approve a proposed, new super-critical (and state-of-the-art) coal-fired generating facility to be constructed by FPL in Glades County, a project which FPL had considered essential to its ability to meet projected electricity demands in its service territory.<sup>93</sup>

**d. Site Certification Modification**

The original site certification for SGS Units 1 and 2 includes the generation and transmission facilities themselves, the pump house, and the water intake and discharge systems. It does not include barge dock or coal conveyor facilities of the type hypothesized by EVA. Those would be considered “associated facilities” under the Florida Electrical Power Plant Siting Act (“PPSA”),<sup>94</sup> and would require separate approval through a modification of the existing certification for SGS.

The certification modification proceeding -- to which all parties to the original certification also are parties<sup>95</sup> -- is coordinated by the FDEP Office of Siting

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<sup>93</sup> See SECI Rebuttal e-workpaper “Glades Project.pdf.”

<sup>94</sup> See Fla. Stat. §403.503 (14). The definition of “associated facilities” includes “those onsite and offsite facilities which directly support the construction and operation of the electrical power plant such as...fuel unloading facilities [and] pipelines necessary for transporting fuel for the operation of the facility or other fuel transportation facilities.” Fla. Stat. §403.503(7). Because a riverside coal delivery system would be an “associated facility” owned by SECI and physically connected to SGS, it would have to be certified under the PPSA.

<sup>95</sup> Fla. Admin. Code R. 62-17.211 (1)(b)2.a.

Coordination,<sup>96</sup> which coordinates an inter-agency review and forwards a recommended decision to the Governor and cabinet (the Siting Board) for final disposition.<sup>97</sup> State and local agencies are participating entities, and local governments determine whether a proposed facility is consistent with land use plans and zoning ordinances (as discussed, *supra*, current Putnam County zoning rules would preclude construction of a barge dock and coal conveyor on SECI's existing property). *See* Fla. Stat. § 403.50665(1). In addition to FDEP and Putnam County, at least the following agencies would participate in the modification application process, any one of which could raise objections leading to denial of the application:

- St. Johns River Water Management District;
- Florida Fish and Wildlife Conservation Commission;
- Florida Department of Community Affairs;
- Florida Department of Transportation;
- Florida Department of State, Division of Historical Resources; and
- Northeast Florida Regional Planning Council.

Some of the key substantive standards relevant to certification modification, which are not addressed at all by CSXT or its consultants, include the following:

- Construction and operation of the facility cannot result in any violations of state water quality standards. *See* Fla. Admin. Code R. 40C-4.301 (1)(e). *Inter alia*, the activities examined include dredging and spoils disposal. In its “analysis,” EVA

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<sup>96</sup> SECI's sponsoring Witness Owen was Administrator of this Office from 1974 to 2007.

<sup>97</sup> Fla. Stat. §403.516 (1)(c)4.

includes a cost component for dredging, but it makes no provision whatsoever for spoils disposal. SECI does not control any land in the vicinity of the area that EVA proposes be dredged where spoils could be deposited.

- Construction and operation of the facilities cannot adversely impact endangered or threatened species or species of special concern. *See* Fla. Admin. Code R. 40C-4.301 (1)(d). CSXT comments on the likelihood of adverse impact on two threatened species -- the gopher tortoise and the eastern indigo snake<sup>98</sup> -- but makes no mention of the Florida manatee, a species of considerable significance. As shown in Rebuttal WP “St. Johns Property Photos.jpg,” the shoreline areas that CSXT’s consultants assume would be dredged are heavy with eel grass, an established manatee habitat. Once present, it is unlawful to harass or harm a manatee in any way; any mechanical operations would have to be stopped until the animal vacated the area of its own accord.

- The facilities must be screened and buffered from neighboring land uses, and their construction and operation must comply with all local ordinances. As discussed at pp. II-47-53, *supra*, the dock and conveyor hypothesized by CSXT’s consultants would directly impact neighboring residential properties, yet CSXT does not even recognize the existence of these properties, much less account for the impact of noise generation and nuisance lighting (on both the land and water sides) on their enjoyment.

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<sup>98</sup> CSXT Reply at II-43-44.

- Finally, the same hostile political environment for coal-fired generation in Florida that doomed FPL's project and another contemporaneous coal project proposed for construction in Taylor County<sup>99</sup> would affect the prospects for a site certification modification, even if one assumes away the obstacles most immediately described above.

e. **FDEP Permits**

The FDEP administers federally-designated programs concerning air emissions and surface water discharges, which would impose yet another, inter-related layer of permit approvals on any facility designed to enable barge deliveries of coal to SGS. The dock and conveyor system that CSXT espouses would require an air construction permit, and a revision to the existing air operating permit for SGS.<sup>100</sup> This would include both emissions from the operation of unloading and conveyor equipment, and fugitive dust from the coal itself. Given the residential character of the properties adjacent to the existing SECI parcel, even if that parcel *could* support a dock and conveyor structure -- which, as shown *supra*, it cannot -- the FDEP would be very unlikely to grant air permits for a 4,000,000 tons per year industrial coal transfer operation. Moreover, because FDEP permits are incorporated into the PPSA site certification process,<sup>101</sup> an adverse recommendation by the FDEP effectively would preclude approval by the Siting Board. Again, other than a passing reference to

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<sup>99</sup> See [www.fmpa.com/index.php?option=com\\_content&task=view&id=135](http://www.fmpa.com/index.php?option=com_content&task=view&id=135).

<sup>100</sup> See Fla. Admin. Code R. 62-210.300 (1)(a) and (2).

<sup>101</sup> Fla. Stat. § 403; Fla. Admin. Code R. 62.

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permitting as a “cost of doing business for any proposed new construction,”<sup>102</sup> CSXT and its consultants gave no consideration whatsoever to these requirements and risks.

**f. Dredge and Fill Permit**

As EVA acknowledges, the construction of a riverside dock capable of handling super-jumbo coal barges would entail extensive dredging to connect the mid-river channel and the dock site.<sup>103</sup> Any dredge and fill activities affecting the St. Johns River would require the prior approval of and issuance of permits by the U.S. Army Corps of Engineers, under Section 404 of the Clean Water Act and Section 10 of the federal Rivers and Harbors Act. The FDEP also would have to approve, as part of the PPSA certification process. As with other regulatory and permitting obstacles, these requirements essentially are ignored by CSXT and EVA in advancing their claims. However, it is very unlikely that the kind of project that EVA proposes could meet them.

To secure a Section 404/Section 10 permit, SECI would have the burden of demonstrating at the least the following, to the satisfaction of the Corps:

- There is no practicable alternative that would have less adverse impact on the aquatic ecosystem and which would satisfy the project’s basic purpose. 40 C.F.R. § 230.10(a).
- The discharge of dredged or fill material would not cause or contribute to violations of water quality standards, would not jeopardize the

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<sup>102</sup> CSXT Reply at II-41.

<sup>103</sup> EVA included only \$500,000 in its cost estimate to cover dredging in connection with its proposed barge dock and conveyor. *See EVA Report* at 24. While this might be adequate for a single project to extend a branch of the central river channel to the shore (assuming away the interference with the water intake pipes and manatee habitat), EVA includes no funding for spoils disposal or for repetitions of the dredging process, which would be needed regularly for any channel branch, much less one that runs perpendicular to the normal river flow. *See Rebuttal Exhibit II-B-1* at 10-11.

continued existence of endangered or threatened species, and would not result in a likelihood of the destruction or adverse modification of critical habitat. 40 C.F.R. § 230.10(b).

- The discharge of dredged or fill material would not cause or contribute to significant degradation of the waters of the United States. 40 C.F.R. § 230.10(c).
- Appropriate and practicable steps have been taken which would minimize potential adverse impacts of any discharge on the aquatic ecosystem. 40 C.F.R. § 230.10(d).

The first criterion cannot be met, as CSXT has delivered coal to SGS for decades and obviously represents a “practicable alternative that would have less adverse impact on the aquatic ecosystem....”<sup>104</sup> Compliance with the other three (3) prongs of the test would be extremely difficult as well, since there is no identifiable property in the area which is suitable for the storage of dredge spoils (another project requirement ignored by EVA), and the dredging of eel grass would degrade critical manatee habitat. Even without the aggressive local community opposition that would be sure to meet any application for construction of a coal dock, the facts on the ground would not support issuance of a Corps dredging permit.

**g.     The St. Johns as an American Heritage River is a Further Obstacle to Construction and Operation of a Barge Dock**

CSXT dismisses the designation of the St. Johns River as an American Heritage River as a “red herring”,<sup>105</sup> suggesting that because it does not prohibit *all*

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<sup>104</sup> The *cost* of that alternative would not factor into the Corps’ consideration, since SECI already uses it. Ensuring that the cost of the rail transportation of coal to SGS is maintained at a reasonable level is a responsibility charged by statute to the Board. 49 U.S.C. § 10701(d)(1).

<sup>105</sup> CSXT Reply at II-43.



development of the shoreline, it has no relevance to the feasibility of the construction and operation of a new, major coal barge unloading facility. CSXT ignores the very real fact that a number of local and national organizations take the designation quite seriously,<sup>106</sup> and would be energized in opposition to a proposal to extend an 800 foot dock facility out into the river to support a four million ton per-year barge transloading operation sited along a residential riverbank. They include:

- The Stewards of the St. Johns River, a coalition of citizens and citizens groups organized to protect the natural quality of the river and its tributaries. Their primary purpose is to restore, preserve and protect the waters of the St. Johns from the adverse effects of industrial or commercial development.
- The Putnam County Environmental Council, an organization which seeks to protect and conserve the natural environment of Putnam County by actively participating in county government deliberations (including zoning and rezoning decisions), conducting public education programs, and promoting “smart growth” before state and local agencies.
- The Clean Water Network, a national coalition of more than 1200 local, state and national public interest organizations, focused on efforts to protect the health and quality of national waterways and water resources.

The status of the St. Johns as a Heritage River -- and the public advocacy associated with it -- would add yet another layer of complexity and burden to the long list

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<sup>106</sup> While elsewhere citing (and mischaracterizing) the 2003 BTG Draft, {  
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of permitting and regulatory approval requirements discussed *supra*, and make it even less likely that a project of the size and scope as that hypothesized by CSXT's consultants ever could get farther than a drafting board.

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In its Opening Evidence, SECI explained that it had considered whether creation of the option of inland barge deliveries of coal to SGS could be feasible as a realistic competitive alternative to CSXT. SECI Opening at II-13-14. However, SECI concluded that cost, operational obstacles, permitting risks, and environmental impacts, among other factors, made barge service to SGS impractical. *Id.* CSXT and its consultants attempt to challenge these conclusions, but as demonstrated herein, they were and are well-founded.

**7. CSXT's Ability to Double SECI's Rail Rates Without  
Losing Traffic Is Indicative of Market Dominance**

The ability of a firm to raise prices significantly without fear of a net loss of revenue is a long-standing and acknowledged indicator of market power. *See CF Industries, Inc. v. S.T.B.*, 255 F. 3d 816, 823-24 (D.C. Cir. 1993), *citing* P. AREEDA & H. HOVENCAMP, *Antitrust Law: An Analysis of Antitrust Principles and Their Application*, ¶ 501 at 85 (1995) ("Market power ... is large when a firm can profit by raising prices substantially without losing too many sales."). *See also E. I. Du Pont De Nemours & Co. v. CSX Transportation, Inc.*, 2008 WL 2588610 (STB served June 30, 2008) (CSXT's ability to significantly increase rates upon expiration of a contract

“without any apparent concern that it would lose the traffic” reflected market dominance).

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} and ratios of revenues to unadjusted system

average costs on unit train service that are in excess of 300% for all origins.<sup>108</sup> CSXT experienced no actual or even threatened loss of traffic or revenue as a consequence of its action. These facts clearly tend to confirm CSXT’s market dominance over coal transportation to SGS. *McCarty Farms*, 3 I.C.C.2d at 832. *See also Market Dominance Determinations and Consideration of Product Competition*, 365 I.C.C. 118, 129 (1981) (“effective competition...means that if a carrier raises the rate for such traffic, then some or all of that traffic will be lost to other carriers or modes.”).

CSXT insists that its rate increases do not indicate market power because

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CSXT Reply at II-45. However, CSXT effectively defines the “market” for utility coal transportation into Florida, as demonstrated by its ability to secure for itself the economic rents resulting from SECI’s origin coal costs. *See* Table II-B-3, *supra*. The fact that there may be *some* absolute ceiling on its pricing does not negate a finding of market dominance when CSXT effectively can act with impunity to dramatically increase SECI’s rates without risk of traffic or revenue loss. *Arizona Public Service Co.*,

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<sup>107</sup> *See* SECI Opening at I-10-11.

<sup>108</sup> *See* Tables II-A-3 and II-A-4, *supra*.



742 F.2d. at 651 (“At some point the availability of an alternative...prevents railroads from raising their rates beyond an outer bound. But the mere existence of some alternative does not in itself constrain the railroads from charging rates far in excess of ...reasonable rates.”).

**8. SECI Is Captive to CSXT for Coal and Petcoke Shipments From Charleston**

The basis of the Board’s statutory jurisdiction to adjudicate the reasonableness of the CSXT-32531 tariff rates for coal and petcoke shipments from Charleston, SC to SGS is addressed in Part I, and will not be repeated here. Independent of its statutory argument, however, CSXT claims that it does not possess market dominance over those shipments because (1) SECI easily could shift the point of origin from the Port of Charleston to the Port of Jacksonville; and (2) it is operationally and economically feasible to move coal and petcoke via motor carriage from Jacksonville to SGS. CSXT Reply at II-46-49.<sup>109</sup> This argument lacks merit, and should be rejected.

As SECI pointed out on Opening, before the question of trucking solid fuel from Jacksonville even could be considered, a suitable point of transload from barge or rail to motor carriage would have to be identified.<sup>110</sup> In fact, no such facilities currently exist. While CSXT’s consultant claims to have identified “several bulk product unloading and handling facilities”<sup>111</sup> that could be used, the only one actually specified is

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<sup>109</sup> The same legion of factors which preclude barge deliveries of coal to SGS apply to petcoke.

<sup>110</sup> SECI Opening at II-14.

<sup>111</sup> *EVA Report* at 4.

the Martin Marietta Aggregates dock at Dames Point.<sup>112</sup> However, EVA's own workpapers show that this facility is wholly unsuitable. The Martin Marietta facility primarily is dedicated to limestone handling for the benefit of its owner. Its air permit mentions coal, but strictly limits coal handling to 1,000,000 tons of anthracite per year for Martin Marietta's direct use. The permit does not include steam coal or petcoke, *and* it prohibits storage or inventory.<sup>113</sup> Inasmuch as storage is essential to the process of a modal shift from vessel or rail to individual 25-ton trucks, this fact alone disqualifies the only facility identified by EVA.

CSXT casually observes that "[t]he Port of Jacksonville handles approximately 6 million tons of coal and petcoke per year,"<sup>114</sup> but neglects to mention that all of this fuel is shipped by Jacksonville Electric Authority for its own use. As noted in Exhibit II-B-1, there are no coal or petcoke transloading facilities at Jacksonville that regularly handle third party business.<sup>115</sup> Thus, the essential prerequisite for CSXT's "truck to SGS" theory -- the ability of SECI to shift petcoke traffic from Charleston to Jacksonville -- cannot be satisfied.

CSXT's estimated cost for the movement of petcoke by truck to SGS is predicated on a "quote" received from Pritchett Trucking. CSXT Reply at II-47. The workpaper evidencing this "quote," however, shows that the company's offer simply

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<sup>112</sup> *Id.*

<sup>113</sup> See CSXT Reply e-workpaper "Martin Marietta Jaxport air permit."

<sup>114</sup> CSXT Reply at II-46-47.

<sup>115</sup> See Exhibit II-B-1 at 20.

assumes that petcoke would be loaded at “Dames Point Terminal.”<sup>116</sup> As shown above, there is no permitted coal/petcoke transload facility in place at Dames Point other than the Martin Marietta Aggregates dock, and that facility cannot handle steam coal or petcoke, and cannot store any product during the inevitable interval between vessel unloading and the complete reloading of delivered volumes into trucks.<sup>117</sup>

Finally, CSXT’s “trucking option” argument appears to presume that coal or petcoke from Charleston somehow is a separate product for market dominance purposes, as opposed to an integrated part of the overall fuel volume transported to SGS by CSXT under the challenged tariff. This is without support in either fact or law. From a transportation perspective, solid fuel moving to SGS is completely fungible (as Tariff CSXT-32531 itself reflects), and the Board’s precedents establish that multiple origins for the same product are to be aggregated for purposes of measuring a railroad’s market power. *See AEP Texas* at 12-13; *McCarty Farms*, 3 I.C.C. 2d at 826. Properly considered, even if it is assumed that SECI could displace CSXT with motor carriage for coal or petcoke transportation from Charleston, the maximum divertable volume by

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<sup>116</sup> CSXT Reply e-workpaper “Pritchett Trucking.pdf.”

<sup>117</sup> As CSXT acknowledges, the trucks would have to cycle between Jacksonville and SGS, 10 hours each, 6 days each week. CSXT Reply at II-49. Assuming *arguendo* that CSXT’s estimate of 50 truckloads delivered each day was accurate and feasible (*id.*), only 1250 tons could be delivered in a day. {

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CSXT's own account (350,000-375,000 tons year)<sup>118</sup> amounts to less than 10% of the total volume of solid fuel expected to be transported under Tariff CSXT-32531 each year. The ability to divert such a small portion of the relevant traffic provides no meaningful constraint on CSXT's pricing.<sup>119</sup> See *Metropolitan Edison v. Conrail*, 5 I.C.C. 2d 385, 410 (1989).

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<sup>118</sup> CSXT Reply at II-47, 49.

<sup>119</sup> In this regard, it bears noting that CSXT is charging SECI more than \$28.00 per ton for a service which the carrier claims can be replaced by an "option" costing less than \$7.00 per ton, with no apparent concern that SECI could or would shift the movements elsewhere.



**III-A Stand-Alone  
Traffic Group**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**SEMINOLE ELECTRIC COOPERATIVE,  
INC.**

**Complainant,**

**v.**

**CSX TRANSPORTATION, INC.**

**Defendant.**

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**Docket No. 42110**

**PART III**

**STAND-ALONE COST**

**III. A. STAND-ALONE TRAFFIC GROUP**

The SFRR traffic group includes coal, general freight and intermodal traffic, moving in unit train, trainload and carload service. As with most other recent utility coal rate proceedings, the subject traffic includes both local and cross-over movements. In its Opening Evidence, SECI described the procedures followed to identify and model the handling of this traffic under the hypothetical, optimally efficient presumptions inherent in the *Coal Rate Guidelines* given the nature, complexity and limitations of the CSXT data produced in discovery, and the timing of much of that production.<sup>1</sup>

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<sup>1</sup> See SECI Opening at III-A-2-7.

SECI has not reviewed in detail all of the pleadings submitted in each of the other coal rate cases adjudicated by the Board since 1985, so it cannot attest whether there is precedent for the level of arrogance and vitriol which characterizes CSXT's Reply presentation on the issues of SFRR traffic and revenues.<sup>2</sup> SECI can only assume that the Board is interested in substance, not packaging, and will evaluate the parties' competing positions accordingly. On that basis, and by way of summary of SECI's rebuttal evidence on the main points identified by CSXT,<sup>3</sup> the better evidence of record will show the following:

First, SECI's traffic group does not reflect the intentional and extensive external re-routing of traffic, as CSXT claims.<sup>4</sup> As further detailed *infra*, the pace of CSXT's production of essential traffic data during discovery eventually necessitated a manual analysis to identify CSXT traffic that moved over the routes replicated by the SFRR. Of the 3,201 separate movements<sup>5</sup> included in the base traffic group, CSXT alleges that 183 implicate external re-routes.<sup>6</sup> As shown herein, 173 of those movements actually do utilize the SFRR routing described in the Opening Evidence in the real world,

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<sup>2</sup> CSXT Reply at III-A-1-101.

<sup>3</sup> *Id.* at III-A-1-6.

<sup>4</sup> CSXT Reply at III-A-1-2.

<sup>5</sup> A movement represents a unique CSXT origin and destination for coal and intermodal traffic, and a unique CSXT origin, destination and two-digit STCC for general freight traffic. The base SFRR traffic group is comprised of 534 coal movements, 237 intermodal movements and 2,430 general freight movements.

<sup>6</sup> *Id.*

and thus are not “re-routes” at all. The remaining 10 movements -- a mere 0.3% of the total -- have been removed from SECI’s Rebuttal calculations, not because of a “failure of proof,”<sup>7</sup> but because of delays in data production by CSXT which otherwise would have prevented their inclusion in the first place.

Second, SECI legitimately followed established Board precedent in adjusting 2008 base year traffic volumes using CSXT’s internal forecast of 2009 coal and carload traffic, and was under no obligation to alter this approach in the midst of evidentiary preparation solely at the self-serving urging of CSXT counsel.<sup>8</sup> On Rebuttal, SECI has updated the 2009 coal volumes for the SFRR based upon EIA’s April 2009 Annual Energy Outlook (“AEO”) Update forecasts. It is noteworthy, however, that for all of CSXT’s histrionics regarding the forecast that SECI initially relied upon as regards coal traffic, CSXT’s Reply Evidence with respect to general freight and intermodal shipments continues to use the same 2009 CSXT carload and CSXI intermodal forecasts that are incorporated in SECI’s presentation.

In addition, SECI also followed established Board precedent in aggregating coal origins by EIA production region for forecasting purposes, consistent with the agency’s ruling in *CP&L*. Contrary to CSXT’s characterization, that decision was not a limited *sui generis* remedy for defective discovery, nor does it conflict with the Board’s policies on external traffic re-routes. By its terms, it is the “better approach” to

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<sup>7</sup> CSXT Reply at III-A-2.

<sup>8</sup> See CSXT Reply at III-A-34-35.

accommodating the reality of constantly shifting coal purchase patterns among Eastern coal shippers, and is key to the essential goal of making the SAC test workable in the East as well as in the West. *CP&L* at 250.

Third, SECI's forecast of future shipments of coal to SGS is reasonable, and consistent with the long-term Fuel Supply Plan ("Plan") developed by SECI independent of litigation, and used for a wide variety of planning and evaluative purposes. That the Plan's 2010 forecasted volumes substantially exceed actual 2009 receipts<sup>9</sup> should come as no surprise -- especially to CSXT -- given that 2009 was marked by a series of lengthy and unusual generating unit outages which collectively reduced SECI's coal consumption by some 1,100,000 tons as compared to typical and planned annual volumes.

Fourth, SECI correctly applied CSXT's 2009 Carload Forecasts for general freight and intermodal traffic and did not fail to reflect offsetting traffic declines.<sup>10</sup> While the methodology did lead to a very limited number of double-counts, they were minor and are corrected in SECI's Rebuttal restatement.

Fifth, CSXT's critiques of SECI's methodology for projecting future rates and revenue growth for the SFRR -- which methodology adheres faithfully to approaches approved by the Board in prior cases -- are without foundation, and should be rejected. SECI's restatement does include three adjustments: (1) an adjustment to revenues for

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<sup>9</sup> CSXT Reply at III-A-4.

<sup>10</sup> *Id.*

shipments to SGS to correct an inadvertent error;<sup>11</sup> (2) an adjustment to 2009 rate escalation for intermodal movements not governed by produced contracts; and (3) an adjustment to fuel surcharge revenues for certain general freight shipments. In other respects, however, the only changes to SFRR revenues that are appropriate on Rebuttal are those resulting from changes to SFRR traffic volumes.

In the balance of this Part III-A, SECI demonstrates why the preponderance of CSXT's challenges to the SFRR traffic and revenue calculations submitted on Opening are unfounded, and explains the basis for those adjustments which are appropriate in light of certain data and explanations offered by CSXT for the first time in its Reply Evidence. The results of these adjustments and SECI's restated traffic volumes and revenues for the SFRR are displayed in SECI Rebuttal Exhibits III-A-1 and III-A-2.

**1. Stand Alone Railroad Traffic**

**a. Introduction**

While railroading in the West is not without its share of commodity diversity and operational complexity that in various ways impact a maximum rate analysis under the SAC test,<sup>12</sup> it is generally true that coal transportation in the East occurs over rail lines which are less homogenous in terms of train types, commodities, and service parameters than their Western counterparts. In this case, that means that the

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<sup>11</sup> CSXT's sneering reference to this error (CSXT Reply at III-A-4-5) is representative of the irrelevant, *ad hominem* commentary which, unfortunately, permeates CSXT's Reply Narrative.

<sup>12</sup> See *FMC* at 705-707.

SFRR necessarily must be designed to handle a wider array of traffic and traffic types than might be seen in a more “typical” coal rate proceeding, a fact which SECI acknowledged on Opening. *See* SECI Opening at III-A-2. Unless CSXT and NS are to be granted unfettered freedom to set rates on captive traffic at whatever levels they choose without risk of Board intervention,<sup>13</sup> however, traffic diversity and operational complexity in and of themselves cannot frustrate the effective application of the *Coal Rate Guidelines* as a meaningful constraint on market dominant pricing. Likewise, the use of appropriate simplifying conventions to manage the scope of a rate proceeding is reasonable and consistent with the goals of National Transportation Policy. 49 U.S.C. §§10101(2), (6) and (8); *PSCo/Xcel* at 603; *Association of Amer. RRs v. STB*, 306 F. 3d 1108 (D.C. Cir. 2002).

CSXT opens that portion of its Reply which addresses the SFRR’s traffic volumes with an “overview”<sup>14</sup> that accentuates what CSXT considers to be a “staggering array of different traffic with different operating characteristics, requiring different types of equipment and service.”<sup>15</sup> In actuality, however, the SFRR is a replication of a portion of the CSXT system, “specifically tailored to serve an identified traffic group, using the optimum physical plant...needed for that traffic.” *AEP Texas* at 7. In its Opening Evidence, SECI demonstrated that the design, operating plan and facilities of the SFRR --

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<sup>13</sup> As shown *supra*, the carrier essentially doubled SECI’s coal rates overnight, and before the Board now asserts a right to raise them yet again to some higher, undefined level, immune from agency regulation.

<sup>14</sup> CSXT Reply at III-A-6-9.

<sup>15</sup> *Id.* at III-A-8.

developed in accordance with the *Guidelines* and Board precedent -- were adequate to meet the requirements of the selected traffic group. See SECI Opening, Parts III.C, III.D and III.F. Later in this Rebuttal, SECI answers the various criticisms of those plans and facilities that have been lodged by CSXT, and consistent with the proper standard for rebuttal evidence,<sup>16</sup> either shows those criticisms to be without merit or makes appropriate adjustments to the SFRR parameters and costs. Immediately below, SECI rebuts CSXT's challenges to the SFRR traffic group and forecasted traffic volumes.

**b. The SFRR Does Not Include External Re-Routes**

CSXT falsely and unfairly accuses SECI of deliberate misrepresentation to the Board on the question whether the SFRR traffic group includes so-called external re-routes. CSXT Reply at III-A-9-26. As stated on Opening, SECI did not purposely include in the SFRR traffic base any movements that resulted in the residual CSXT having to handle the traffic via routes that such traffic has not or does not use in the real world. SECI Opening at III-A-5. Out of the 3,201 separate movements handled by the SFRR in the base year, CSXT claims that 183 of them (170 coal movements and 13 general freight movements) involve improper external re-routes. CSXT Reply at III-A-15, 26. As shown herein, CSXT is wrong with respect to all 13 non-coal movements, and 160 of the 170 coal moves. Upon review of the relevant traffic data, which only recently was available to SECI in complete form (including proper documentation), SECI agrees

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<sup>16</sup> See *Duke/NS* at 100-101.



that 10 coal movements do not move in the real world over lines replicated by the SFRR, and has removed this traffic from the Rebuttal restatement.

**i. Data Limitations on Opening**

CSXT takes issue with SECI's statement that the data produced by CSXT and useable by SECI prior to the filing of Opening Evidence did not allow the routes of all trains to be specifically traced, so as to precisely define the on-SFRR and off-SFRR points in each case. *See* SECI Opening at III-A-20; CSXT Reply at III-A-12. CSXT then proceeds to spend three and one-half pages of Narrative text and some 29 pages of a made-for-litigation Exhibit<sup>17</sup> purporting to explain how SECI could have made better use of the data that CSXT chose to produce to more precisely identify certain movement routings. *See* CSXT Reply at III-A-12-15.

Frankly, the fact that CSXT needs to engage in such a lengthy explanation lends support to SECI's position as to the utility of certain data produced by CSXT earlier in this proceeding. In Rebuttal Exhibit III-A-3, SECI explains in detail the production delays and data issues which adversely affected SECI's evidentiary preparation capability in mid-2009. Ultimately, however, SECI was forced to rely on a manual evaluation of the data needed for certain analyses, and the incomplete production of decoders, descriptions and other tools by CSXT rendered certain data bases unusable prior to Opening. As described below, these shortcomings resulted in 10 coal movements being included in the SFRR traffic group even though in actuality they have

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<sup>17</sup> CSXT Reply Exhibit I-2.

not used routes that include lines replicated by the SFRR. These have been removed from the Rebuttal restatement. As to the other 173 movement challenged by CSXT, however, the carrier's claims of "external re-routes" are meritless.

ii. **The Proper Definition of Off-SARR Re-Routes**

The Board first addressed the issue of off-SARR re-routes in *TMPA*, where the complainant sought to route non-issue cross-over traffic along a route that the defendant carrier had not used to carry the traffic in actual operations. The Board ultimately ruled against the complainant, because the proposed route would leave the traffic in question at a location that was not used by that traffic on the defendant's system.<sup>18</sup> Significantly, however, the Board did *not* reject the complainant's decision to route all traffic from a given region over one of two different routes that the defendant actually used. *See TMPA* at 594-595. *See also WFA/Basin II* at 11 fn. 16. Since some of the traffic had used the selected route, reliance on it by the SARR for all of the traffic did not constitute a "re-route." *See Duke/NS* at 112 (a re-route requires the incumbent to alter its handling of the traffic as compared to how it has handled it in actuality).

In this case, CSXT implicitly assumes that a movement should be considered re-routed if SECI directs the traffic over anything but the "predominant" route of movement.<sup>19</sup> However, this is not the settled definition of a re-route, and it is

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<sup>18</sup> *TMPA* at 595-598.

<sup>19</sup> *See CSXT Reply* at III-A-15: "...the SFRR route hypothesizes an interchange point with the residual CSXT that is not on CSXT's sole or predominant actual route of movement for that O-D pair."

contradicted by prior cases in which the Board has accepted the routing of traffic for a particular origin-destination pair over the SARR where only a minority portion of that traffic followed the selected route on the incumbent's system.

For example in *Duke/CSXT*, the complainant designated a traffic group in which traffic available to the SARR moved over multiple routes in the real world. CSXT contested the inclusion of much of the complainant's traffic group, alleging that many of the moves involved off-SARR re-routes. To explore the issue further, the Board directed the parties to submit supplemental evidence concerning the alleged re-routed traffic on the SARR system. In addressing the matter of inclusion of traffic that moved over several routes on CSXT's actual rail network, the complainant presented the following:

Duke has, with this filing, eliminated another 4 of the 31 rerouted movements on the grounds that CSXT routed a movement involving the specific O-D combination over the ACW's proposed route of movement at least once in 2001. In other words, Duke's position is that if the CSXT used the ACW's proposed routing for the O-D combination at least once during 2001, the movement should not be classified as a reroute.

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The defendant's actual routing of the traffic along Duke's proposed route demonstrates that this traffic can and does move that way and the ACW's routing does not confront any insurmountable obstacles. Accordingly, to restrict the SARR's ability to repeat what the defendant incumbent already did in the real world would constitute an impermissible barrier to entry.<sup>20</sup>

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<sup>20</sup> See "Supplemental Evidence On Rerouted Traffic of Complainant Duke Energy Corporation - Redacted, Public Version," filed January 5, 2005 at 4-5.

While CSXT disputed the complainant's position, the movements at issue eventually were included in the SARRR traffic group used in the SAC analysis.<sup>21</sup>

The rule that emerges from prior Board precedent is that proof of actual movements by the incumbent over a route proposed for use by the SARR is sufficient to support the SARR's use of *any actual route* to handle all of the forecasted traffic between a particular origin-destination pair, without triggering the Board's evidentiary requirements applicable to external re-routes. This principle guides SECI's traffic selection, and effectively rebuts CSXT's claims with regard to all but 10 of the movements challenged as off-SFRR re-routes.

**iii. 173 of the 183 Movements at Issue Do Not Involve Off-SFRR Re-routes**

For a movement to be rightfully considered an off-SARR reroute, the traffic must be interchanged with the incumbent carrier along a portion of the incumbent carrier's system over which the traffic does not ever move in actual operations. This is not the case in 160 of the coal movements and all 13 of the non-coal movements alleged by CSXT to be off-SARR reroutes. CSXT shipment and event data provided in discovery, and additional event data presented for the first time with CSXT's Reply Evidence, shows that traffic for each of these movements moved over sections of the SFRR in the base year (2008), making this traffic eligible for inclusion in the traffic group.

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<sup>21</sup> *Duke/CSXT* at 419.

SECI has included in its Rebuttal workpapers CSXT shipment and event data confirming the routing of each of the movements contested by CSXT, and summarizes the results of its analysis in Rebuttal Exhibits III-A-3 and III-A-4 to this Rebuttal.<sup>22</sup>

As shown in Rebuttal Exhibit III-A-4, of the 170 coal movements that CSXT identified as off-SARR reroutes, CSXT event data confirms that 57 of the movements use the route indicated by SECI in its Opening Evidence. In addition, the car event data that SECI included in its Opening Evidence and CSXT included in its Reply Evidence shows that 51 movements moved over shorter routes than first established by SECI in its Opening Evidence, while an additional 52 movements actually moved over longer segments of the SFRR than first utilized. SECI has adjusted its Rebuttal traffic group to account for the adjusted routing based on this new information.

Of the remaining 10 coal movements identified by CSXT, which moved from certain CAPP region mines to Duke's Marshall Generating Station at Terrell, NC and South Carolina Electric & Gas's Wateree Generating Station in North Wateree, SC, SECI has reviewed the available event data and agrees with CSXT that these movements do not operate over any CSXT line segments replicated by the SFRR. As such, SECI has removed the traffic for these 10 origin-destination pairs from its Rebuttal traffic group.

Rebuttal Exhibit III-A-5 summarizes the CSXT event data for the 13 movements of non-coal traffic erroneously identified by CSXT as off-SARR reroutes. In

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<sup>22</sup> See SECI Rebuttal e-workpaper "Coal Reroute Rebuttal Workpapers.xls" for coal traffic and SECI Rebuttal e-workpaper "GF Reroute Rebuttal Workpaper.xls" for non-coal traffic.

all 13 cases, CSXT event data shows that CSXT carried traffic for the subject movements over the route replicated by the SFRR. As such, SECI has retained this traffic without change in its Rebuttal restatement.

**c. On-SARR Re-Routes**

Apparently, CSXT cannot accept SECI's evidence in one issue area without tossing some gratuitous invective toward the evidence in another. *See* CSXT Reply at III-A-28. Nevertheless, there is no dispute between the parties with respect to the SFRR's internal re-routings of two groups of traffic, as discussed in SECI's Opening Evidence at III-C-52-53. *Id.* CSXT's proposed changes to the operating plan and related parameters to handle this traffic -- which are not necessary and would artificially inflate the SFRR's operating costs -- are addressed in Parts III-C and III-D.

**2. Volumes (Historical and Projected)**

**a. Coal Traffic**

**i. Non-Issue Coal Traffic**

CSXT offers two basic criticisms of SECI's evidence regarding 2009 coal volumes for the SFRR other than the tonnages attributable to SGS. First, CSXT claims that SECI employed an inaccurate forecast (CSXT's own) to adjust coal volumes for the last full year that data was available (2008) to determine 2009 tonnages, and that alternative volumes proffered by CSXT should be used. Second, CSXT argues that for purposes of accounting for shifts in coal purchase and shipment patterns from year to year, it is not appropriate to aggregate origin data on an EIA production region basis, the

Board's 2003 directive in *CP&L* notwithstanding. CSXT Reply at III-A-29-30. CSXT is in error on both counts.

**(a) Forecasts**

In its Opening Evidence, SECI developed non-issue coal traffic volumes for the first year of the SFRR's operation (2009) following the procedure repeatedly approved by the Board in previous cases. SECI took actual CSXT coal traffic volumes for the most recent full year for which data was available (2008), and adjusted it forward using CSXT's 2009 internal forecast.<sup>23</sup> *See AEP Texas* at 16; *TMPA* at 599; *Duke/CSXT* at 426.

On Reply, with characteristic brevity and respectful understatement, CSXT argues that its 2009 forecast (at least with respect to coal)<sup>24</sup> is too inaccurate to be used in this case, and should be replaced with what it represents is "actual" coal traffic data for 2009. CSXT Reply at III-A-30-39. As evidence of the alleged inaccuracy, CSXT points to an April 2009 revision made by EIA to its 2009 AEO, the July 2009 edition of EIA's Short-Term Energy Outlook ("STEO"), and CSXT's proffered traffic data for the first three quarters of 2009. *Id.* at III-A-31-32, III-A-36.<sup>25</sup>

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<sup>23</sup> SECI Opening at III-A-7.

<sup>24</sup> As discussed *infra*, SECI also used CSXT's internal carload forecast to develop volumes of general freight and intermodal traffic. CSXT's Reply relies upon this forecast as well.

<sup>25</sup> CSXT also claims that it was illegitimate for SECI to use the 2009 CSXT forecast because CSXT counsel had "warned" against it, and CSXT produced traffic data for 1Q09 which showed coal volumes { } than those in the forecast. *See* CSXT Reply at II-A-35. This is nonsense. No party to litigation -- before the Board or

SECI agrees that it would not be unreasonable to use the forecasts included in the April 2009 AEO Update in lieu of CSXT's January 2009 forecast to calculate 2009 coal volumes for the SFRR, and has done so in its Rebuttal restatement. The EIA's forecasts are considered neutral and objective, and their use is now standard in SAC cases. *See AEP Texas* at 16; *Duke/NS* at 145. However, it would be wholly *inappropriate* to use CSXT's alleged "actual" volumes for the first three quarters of the year. CSXT has only produced actual traffic and train/car movement data for the first quarter of 2009; its 2Q09 and 3Q09 volumes are simply numbers on a spreadsheet with no underlying, supporting data.<sup>26</sup> Thus, they cannot be verified, and there is no database to use in order to determine the actual volumes for the origin-destination pairs in the 2008 SFRR group. Moreover, what detailed information can be gleaned from the data provided indicates that CSXT {

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Additionally, Board precedent decidedly disfavors substituting so-called "actual" volumes for those developed using the procedure employed by SECI here, solely

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otherwise – is under any obligation to allow opposing counsel to dictate the course and substance of the first party's evidentiary preparation, especially where -- as here -- the communications are speculation as to what may occur in the future. The same is true with respect to the 1Q09 traffic data; an entire year's forecast is not undermined by a single quarter's performance. This holds true more so for CSXT's 1Q 2009 coal traffic, which according to CSXT's 1Q 2009 Quarterly Financial Report, showed an utility coal traffic increasing over 1Q 2008 levels and only a slight decline in total coal traffic.

<sup>26</sup> *See* CSXT Reply e-workpaper "CSXT 2009 Coal Actuals.xlsx."

<sup>27</sup> *See* pp. III-A-32, *infra*. These {  
at III-A-39 n. 33. } CSXT Reply



based on the passage of time or the availability of updated figures. *See, e.g., AEP Texas* at 31 (2007 decision relied on 3Q00 – 4Q02 actual volumes adjusted per the defendant’s internal and EIA published forecasts, with final evidence filed in 2007); *PSCo/Xcel* (2004 decision relied on 1Q01-2Q02 actual volumes adjusted in the same way, with final evidence filed in 2003). This is both rational and practical, as the SAC analysis fundamentally is a model-based analysis, not a direct observation exercise, and otherwise there would be no end to a proceeding as “actual” data regularly would become available to substitute for previously forecast volumes.

Finally, in the course of its unnecessarily prolix treatment of the issue of 2009 coal traffic levels, CSXT gratuitously and falsely attributes the structure and length of the procedural schedule in this case solely to the actions of SECI. *See* CSXT Reply at III-A-33, III-A-38 n. 30. While it should not be necessary to recount the actual facts at this stage, CSXT’s decision to take the course it has compels SECI to set the record straight.

The procedural schedule initially proposed by SECI in this case was consistent with schedules adopted by the Board in recent coal rate litigation, all of which deviated from the default schedule set out in 49 C.F.R. Part 1111.8. In accepting SECI’s proposal and overruling CSXT’s objection, the Board noted that the default schedule “has grown dated due to the increasing complexity of these cases...”. *See* Decision served December 11, 2008. Further, when SECI subsequently sought modification of the initial schedule, it did not do so alone. As SECI’s April 30, 2009 Unopposed Petition stated, the revised dates were the result of an agreement between the parties, and “CSXT

concur[red] in the relief requested.” *Id.* at 1. When SECI later sought a second, modest extension of the filing dates, CSXT filed separately, not to oppose the relief, but to signal its own prospective petition for an additional extension of the due date for its reply evidence, a request which the Board pre-emptively granted. *See* Decision served July 13, 2009 (adding 30 more days to the period allotted for CSXT’s Reply). Plainly, the schedule for this proceeding is the product of collaboration among the parties and the Board.

SECI’s restatement of 2009 non-issue coal volumes, which includes the adjustments discussed in Part III-A-1-b, is summarized in Rebuttal Exhibit III-A-1. As shown, when combined with SGS shipments the total 2009 coal volume for the SFRR is 72.0 million tons, a reduction of approximately 10 million tons as compared to SECI’s Opening Evidence.

**(b) SECI Properly Projected Non-Issue Coal Traffic**

In *CP&L*, the Board adapted the coal traffic projection procedures of the SAC methodology to accommodate the real world phenomenon of shippers regularly shifting their coal purchasing patterns among mines in a given production region, a practice which is particularly prevalent in the East, where there are many more individual mines and shippers than in the West. Recognizing that limiting a SARR’s future coal traffic to projected changes in volume along the specific origin-destination routes incorporated in the base traffic group would unfairly fail to reflect traffic that still would move over lines replicated by the SARR despite a shift in origins as compared to the base year, the Board ruled that the SARR proponent should forecast future coal traffic by

grouping origins on an EIA production region basis, and applying the neutral EIA coal growth forecast for each region. *CP&L* at 250. SECI followed this rule in its Opening Evidence in developing coal volumes for the SFRR (other than volumes moving to SGS) over the 2009-2013 time period. SECI Opening at III-A-8-11.

In its Reply, CSXT challenges the application of the *CP&L* rule in this case, toward the very obvious end of seeking to artificially reduce the coal traffic volumes available to the SFRR. CSXT Reply at III-A-39-53. CSXT begins by basically re-writing the Board's ruling in *CP&L*, inventing an extremely narrow rationale for the Board's action before declaring it *sui generis* and limited to that case alone. *Id.* at III-A-41-42. Next, CSXT offers "additional reasons" why *CP&L* should not apply,<sup>28</sup> before challenging the ruling itself (without admitting it). *Id.* at III-A-45-48. CSXT closes with a "correction" -- *i.e.* a significant reduction -- of SFRR coal volumes that largely mirrors the approach that the Board specifically rejected in *CP&L*. *Id.* at III-A-51-53.

As discussed below, none of CSXT's claims regarding the *CP&L* precedent or its application in this case has merit.

**(i) CP&L Adopted a Rule of General Applicability**

Repeatedly citing the same three pages of the Board's decision -- but pointedly quoting only one small portion of it -- CSXT argues that the Board's ruling in *CP&L* was "an extraordinary remedy" intended only to cure a supposed deficiency in the defendant railroad's discovery responses. CSXT Reply at III-A-41-42. Thus confined,

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<sup>28</sup> *Id.* at III-A-43-45.

CSXT argues, *CP&L* should be ignored in this case because CSXT claims that it has been more forthcoming in its traffic data production. *Id.* at III-A-43. CSXT's cramped reading of *CP&L* should be rejected.

In *CP&L*, the defendant railroad asserted that forecasted changes in coal traffic for the SARR should be restricted to changes in traffic between the same origin-destination pairs identified in the base year. *CP&L* at 249. Endorsing the counter-argument advanced by the complainant shipper, however, the Board squarely identified the substantive problem to be addressed:

As CP&L pointed out, however, the coal business in the Central Appalachian region is constantly shifting. A customer may ship from one mine in one year, then shift to another the next year, and back to the first mine in the following year. Consequently, to freeze the traffic group as NS would, limiting it to the exact origin-destination (O/D pair) matches reflected in one particular year, is unduly restrictive and does not fairly reflect the traffic that would be available to the [SARR] in any given year.

*Id.* Nowhere did the Board suggest that it was fashioning a remedy for inadequate discovery; indeed, it specifically clarified that the flaws it was addressing were in the "methodology used by NS for identifying traffic in the [SARR] group, not some broader problem with the traffic data NS produced in discovery." *Id.* at 250 n.6.

"Properly understood in context,"<sup>29</sup> the Board's ruling in *CP&L* adapted the coal growth forecasting methodology typically employed in cases addressing rates on movements from the Powder River Basin in Wyoming -- where annual shifts in origin are

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<sup>29</sup> CSXT Reply at III-A-42.

irrelevant because of the proximity of mines and the fact that the railroads serving that region usually set a single set of rates applicable to all origins -- to be workable in cases arising in the East, where traffic patterns are “constantly shifting” and there are “many more mines and shippers than in the West.” *Id.* at 250. The Board adopted an EIA regional aggregation approach as a means to avert the unfair burden that otherwise would fall on complainants to attempt to predict or anticipate traffic changes in the face of these shifting patterns. *Id.* CSXT’s mischaracterization of *CP&L* as a *sui generis* decision directed at a discovery dispute<sup>30</sup> finds no support in the ruling itself, or the Board’s discussion of the problem to which it was addressed. Likewise, CSXT’s “additional reasons” for non-application of the *CP&L* rule in this case<sup>31</sup> are unpersuasive.

First, despite CSXT’s attempt at revision, the Board in *CP&L* specifically endorsed “origin shifting” as CSXT defines it; that is, aggregating to identified base year origins the forecasted traffic changes for the same EIA production region. As discussed above, this was not a “remedy” for discovery defects, but an adaptive response to the fact that coal purchase patterns in the East are “constantly shifting,” and a complainant would be unfairly prejudiced if -- as CSXT advocates here -- the only recognized SARR coal traffic growth is that which occurs at the origins (or very close proximate points)<sup>32</sup> and

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<sup>30</sup> CSXT Reply at III-A-42.

<sup>31</sup> *Id.*

<sup>32</sup> CSXT Reply at III-A-43. Contrary to CSXT’s casual gloss, the Board said nothing about limiting aggregation to shifts “to another nearby mine.” *Id.* The approved aggregation approach focused on shifts within EIA production regions. *CP&L* at 250.

along the routes identified in the base year. *Id.* at 249-250. The prospect of origin shifting by a SARR's customer was not a "possibility" considered as "partial support" for the aggregation approach; it was the central justification:

An O/D pair-specific approach to the traffic group is too restrictive in this situation. It would be unfair to require the complainant to anticipate specific changes in traffic where traffic patterns are constantly shifting. (This problem appears to be more of an obstacle for coal rate complaints in the East, where there are many more mines and shippers than in the West. But the SAC test must be workable in both geographic settings).

*Id.* at 250.

Second, the notion that the ruling in *CP&L* was a unique remedy for a discovery failure is an invention on CSXT's part, in an attempt to reduce the coal volumes and revenues available to the SFRR. As noted *supra*, the Board in *CP&L* dismissed concerns expressed by the complainant over the quality of data produced by the defendant,<sup>33</sup> and the focus of its *holding* was the need to administer the SAC test in a manner that recognized and accommodated the frequent and geographically broad origin shifting that actually takes place among Eastern coal shippers. *Id.* at 249-250 ("...given the constantly changing traffic patterns..., NS's methodology virtually ensures a decline in tonnage from 2001 and 2002...NS's approach understates the actual tonnage volumes that the [SARR] could expect to haul in 2002."). The Board's regional solution implicitly rejected the restrictive approach advocated here by CSXT. *Id.* at 250.

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<sup>33</sup> *CP&L* at 250 n. 6 (the issue was the "flawed methodology used by NS..., not some broader problem with the traffic data NS produced in discovery").

Third, nothing in the Board's reasoning or ruling in *CP&L* directs that the forecasting approach adopted in that decision is "confined" to cases wherein all origins are served by the SARR, as CSXT suggests. CSXT Reply at III-A-44. The essence of the Board's ruling -- the part which CSXT omits from its selected quotation -- reflects no such limitation:

The better approach is to view the traffic group selected by [the complainant] here *as meant to encompass all coal traffic served by NS that moves over the lines replicated by the [SARR]...* and to view the particular coal traffic that moved over those lines in [the base year] as *representative of the aggregate traffic that would be expected to move on the [SARR] in future years.*

*CP&L* at 250 (emphasis supplied). In *CP&L*, of course, the SARR did serve many of the coal origins in question, so the "lines replicated by the [SARR]" included origin trackage at the mines. However, the regional aggregation approach adopted by the Board implicitly assumes that some coal which actually moved in future years from different origins in the region -- with attendant "different routes between the distinct O-D pairs"<sup>34</sup> -- for SAC purposes was deemed to use the same SARR facilities as the traffic moving from the base year origins included in the SARR traffic group. *Id.* No requirement was imposed on the proponent to measure or otherwise account for different costs (which comparatively could be lower or higher) that might be associated with the different actual routes from the future years' origins. The same rules should apply to the SFRR, which also is designed to "encompass all coal traffic served by [CSXT] that moves over the

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<sup>34</sup> CSXT Reply at III-A-44.

lines replicated”<sup>35</sup> by the SFRR, regardless of future shifts in origin points (including shifts *to* origins included in the base year group from origins which did not handle base year traffic). That the origins themselves are served by the residual CSXT (or NS) rather than the SFRR does not alter that fact, which is central to the *CP&L* regional aggregation rule. Likewise, the fact that aggregation may lead to somewhat different SARR revenue and cost results than an approach limited to specific O-D pairs<sup>36</sup> does not undermine the rule; it is entirely proper for the Board to balance mathematical precision against other, more valid policy goals, such as avoidance of undue restrictions on a complainant’s right to group traffic, or a recognition of the need to accommodate regional differences in coal purchase patterns.<sup>37</sup> See *Major Issues* at 46 (“[w]e conclude that the benefits of fixing a reasonable (if rough) methodology...outweighs the substantial costs to the parties and unlikely benefits of quantifying a more precise estimate in an individual proceeding.”).

Lastly, it is completely irrelevant that the defendant in *CP&L* organized its variable cost presentation on a mine district basis,<sup>38</sup> or that the complainant used a

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<sup>35</sup> *CP&L* at 250.

<sup>36</sup> Contrary to CSXT’s characterization, these differences are not tantamount to “distortion.” CSXT Reply at III-A-44. The court-approved Average Total Cost methodology for allocating cross-over revenues rests on a general premise (the relationship between costs and traffic density) and an averaging convention that in any given case could produce results different from those that would emerge from a line-specific cost and density impact study of the individual segments of a system.

<sup>37</sup> *CP&L* at 250 (“it would be unfair to require the complainant to anticipate specific changes in traffic where traffic patterns are constantly shifting”).

<sup>38</sup> The variable cost calculations referenced by CSXT were used in the market dominance determination, hence their inclusion in Part II-A of the complainant’s evidence. The calculations of variable cost had no impact on SAC at the time of *CP&L*.



forecast produced in discovery that grouped mines into geographic “clusters.”<sup>39</sup> CSXT Reply at III-A-44-45. In *CP&L*, the Board clearly ruled that the tonnage forecasts and related volume aggregations would be based on the EIA forecasts, in view of “the general preference for reliance on official, neutral governmental forecasts.” *CP&L* at 251. In so doing, the Board specifically rejected the approaches advocated by the parties in their evidentiary submissions. *Id.* Perforce, those submissions should carry no weight in this case.

**(ii) Application of the *CP&L* Rule Does Not  
Create Impermissible External Re-Routes**

The application of the *CP&L* regional aggregation rule<sup>40</sup> in this case does not implicate impermissible off-SARR re-routes, as CSXT claims. CSXT Reply at III-A-45-48. In *CP&L*, the Board determined that a SARR’s traffic group should not be strictly defined as a limited list of origin-destination pairs, but rather viewed as representative of the aggregate traffic that would be expected to move over the SARR’s lines in the future. *CP&L* at 250. The methodological assumption employed in *CP&L* was *not* that “all

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<sup>39</sup> CSXT erroneously asserts that the complainant designed its volume aggregation around “compact origin ‘clusters’.” CSXT Reply at III-A-44. A review of the portion of the *CP&L* record cited by CSXT shows that the complainant was applying a forecast produced by the defendant railroad, which forecast was organized in a cluster format. CSXT Reply e-workpaper “CPL 2002 Exerpts.pdf,” (CP&L Rebuttal Evidence at III-A-2).

<sup>40</sup> CSXT refers to “Seminole’s attempted aggregation of projected traffic volumes...across an entire EIA region” (CSXT Reply at III-A-45) as if to characterize SECI’s coal forecasting approach as something other than a straightforward application of the Board’s holding in *CP&L*. There is no more merit to this invented distinction than to CSXT’s mischaracterization of the Board’s action in *CP&L* as merely resolving a discovery dispute.

traffic movements to a given destination...are interchangeable for purposes of SAC analysis.” CSXT Reply at III-A-45. It was that given the extensive shifting of traffic patterns in the Eastern coal fields, it is reasonable to expect that a movement from a given origin in the base year which shifts away in subsequent years would be replaced by other movements coming *to* that origin in the future. *CP&L* at 249-250 (“Under [NS’s] approach,... the [SARR] would not get the benefit of traffic that shifted from a mine not served by the [SARR] to a mine that would be served by the [SARR].”). The *CP&L* regional aggregation rule does not produce external re-routes of base year traffic;<sup>41</sup> it accommodates the Board’s established reliance on neutral EIA forecasts with the acknowledged, shifting nature of Eastern coal traffic.

In its Reply, CSXT attempts to buttress its re-route theory by pointing to the { } example that SECI referenced in its Opening Evidence. CSXT Reply at III-A-47-48. However, this example actually highlights the issue of constantly shifting coal traffic that the Board’s *CP&L* rule is designed to accommodate, and the illogic of restricting the SFRR’s future traffic to forecasted changes between fixed origin-destination pairs.

The SFRR 2008 base year traffic group included coal moving from { } CSXT’s 2009 Carload Forecast expected {

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<sup>41</sup> In *CP&L*, the Board separately discussed the regional aggregation approach to coal traffic forecasting (*id.* at 249-251) and the rules regarding re-routed traffic (both on-SARR and off-SARR) (*id.* at 253-254), and quite properly made no mention of any conflict between the two.

}, which was not a movement included in the base year traffic.<sup>42</sup> CSXT would exclude this traffic, either because it would not move over the SFRR in the “real world” or because including it under the *CP&L* rule would -- in CSXT’s view -- amount to an “off-SARR re-route.” CSXT Reply at III-A-48. However, this exclusion ignores the very pattern shifting of Eastern coal traffic that the Board addressed in *CP&L*. While {

} This traffic shift is not recognized by CSXT’s very limited aggregation standard, but it *is* captured by the EIA regional aggregation methodology.<sup>43</sup>

Under the strictly limited forecasting approach that invariably would result from CSXT’s “re-route” theory, the 2008 { } traffic would have been eliminated in 2009 because the origin shift reflected in the 2009 forecast would involve an “off-SARR re-route,” and the new { } would not be recognized because it was not part of the 2008 base traffic group. As specifically anticipated by the Board in *CP&L*, under CSXT’s approach the SFRR “would lose traffic that shift[ed]” to another origin, and “would not get the benefit of traffic that shifted” from an origin that did not move traffic in the base year to an SFRR origin that was identified in the base year traffic group. *CP&L* at 249.

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<sup>42</sup> See SECI Opening e-workpapers “Coal Traffic Forecast.xls,” worksheet “2009 CSX Carload Forecast.”

<sup>43</sup> *Id.*

The Board's solution to the problem which surfaced in *CP&L* and arises in this case under CSXT's theory -- the understatement of future SARR coal traffic by focusing on base year origin-destination pairs and failing to recognized traffic shifts -- was to consider the SARR's base year traffic group as representative of all traffic served by the defendant that would move over lines replicated by the SARR, and project future volumes based on the change in the EIA's regional forecast. *Id.* at 250-251. This entirely reasonable forecasting convention in no way conflicts with the Board's contemporaneously adopted policy regarding off-SARR re-routes. *Id.* at 253-254.

**(iii) The *CP&L* Rule Properly Reflects Traffic That Would Shift to Base Year Origins**

A feature of the *CP&L* approach to forecasting which specifically was endorsed by the Board as necessary and appropriate is its reflection of the fact that coal which did not originate at a point served by the SARR in the base year could shift *to* the SARR in future years. *Id.* at 250. The aggregation of origins on an EIA production region basis, coupled with reliance on the neutral EIA forecast, accomplishes this valid purpose. *Id.* An unremarkable (or what should be unremarkable) facet of the *CP&L* forecasting rule is that coal which did not originate on the SARR system but moved to a SARR destination via a route that did not include the SARR lines during the base year could shift to the SARR in future years, as the shipper in question changed origins. EIA regional aggregation for forecasting purposes would reflect this phenomenon, not by reference to specific origin-destination pairs, but because -- as the Board reasoned -- "the particular coal traffic that moved over those [SARR] lines in [the base year is]

representative of the aggregate traffic that would be expected to move on the [SARR] in future years.” *Id.*

Reaching deep into its reservoir of pejorative rhetoric, CSXT offers some examples of movements between specific O-D pairs which, though not part of the SFRR’s base year traffic, include coal volumes which represent future SFRR traffic growth through application of the EIA regional forecast. *See* CSXT Reply at III-A-48-51. CSXT decries this natural result of application of the *CP&L* rule as “an improper re-route,”<sup>44</sup> and proposes the exclusion of more than 70,000 carloads of coal traffic from the SFRR’s 2009-2013 volumes. *Id.* at III-A-51. As with its other arguments on this issue, CSXT’s insistence on an O-D pair dependent forecasting approach violates *CP&L* and should be rejected.

The flaw in CSXT’s restrictive focus in the context of constantly shifting Eastern coal origin patterns is apparent from a comparison of CSXT’s forecasted 2009 origins to the actual origins reported by utilities in their EIA Form 923 data. For each utility destination included in the SFRR traffic group, SECI compared the origin rate districts in CSXT’s 2009 Carload Forecast to the actual origins from which the utilities obtained coal, as reported to EIA. The comparison squarely validates the *CP&L* rule: only 49% of the districts that CSXT forecasted would originate coal for particular destinations matched the origins from which the utilities in question actually took coal in

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<sup>44</sup> CSXT Reply at III-A-49.

2009.<sup>45</sup> For example, CSXT forecasted that the {

} However, actual EIA data showed that { } took no coal from {

} CSXT's forecast only matched three out of the six origins actually used, and if future SFRR volumes destined to { } are calculated solely by reference to base year O-D pairs, the additional volumes which shifted *to* the SFRR improperly would be excluded from the SAC analysis.

Application of the same comparative analysis to some of the destinations included in CSXT's Table III-A-3 demonstrates how CSXT's O-D pair focus and ignorance of the *CP&L* rule improperly forecloses future coal shipments that would move over the SFRR from inclusion in the 2009-2013 SFRR volumes.

SECI's Opening Evidence included coal originating at the Bailey and Emerald Mines, destined to { }<sup>47</sup>  
The { }  
{

} However, actual shipment

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<sup>45</sup> See SECI Rebuttal e-workpaper "EIA Origins Match.xls."

<sup>46</sup> See *id.*

<sup>47</sup> See SECI Opening e-workpaper "Coal Traffic Forecast.xlsx," worksheet "OD Pair by Contract."

data reported to EIA showed that {

} This origin

shift is reflected in the regional aggregation forecasting approach enclosed in *CP&L*.

Following the strict O-D pair approach advocated by CSXT, however,<sup>49</sup> the Emerald Mine volumes that the SFRR rightfully could be expected to handle after 2008 would have been excluded.

The same holds true with regard to CSXT's proposed treatment of movements to { } Contrary to CSXT's claims<sup>50</sup> coal originating in { } does move over the SFRR in the base year, including coal from the Little Creek Mine in CSXT's Jellico-Middlesboro district.<sup>51</sup> CSXT's 2009 forecast showed no { } coal originating at Little Creek or anywhere else in the Jellico-Middlesboro district; CSXT expected { } coal to be sourced in the Big Sandy, Hazard and Kanawha districts, none of which would move over the SFRR.<sup>52</sup> In actuality, however, EIA production region data shows that { } continued to receive Little Creek coal in 2009.<sup>53</sup> By

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<sup>48</sup> See SECI Rebuttal e-workpaper "Mt. Storm 2009 EIA.xlsx."

<sup>49</sup> CSXT Reply at III-A-50.

<sup>50</sup> See CSXT Reply at III-A-22-24.

<sup>51</sup> See SECI Rebuttal e-workpaper "Coal Reroute Rebuttal Workpaper.xlsx".

<sup>52</sup> SECI Opening e-workpaper "CSXT Carload Forecast Jan 2009.xls."

<sup>53</sup> See SECI Opening e-workpaper "Marshall.2009EIA.xlsx.". CSXT's Reply workpapers also show movements from Little Creek in 2009. See CSXT Reply workpaper "CSXT 2009 Coal Actuals.xlsx."

refusing to recognize purchase pattern changes on an EIA production region basis, CSXT's approach would eliminate Marshall as an SFRR movement after 2008, even though the plant continued to receive coal via the SFRR's lines in 2009.

In *CP&L*, the Board determined that aggregating coal origins on an EIA production region basis for forecasting purposes was a reasonable and effective method by which to account for constantly shifting purchase patterns in the East, and to prevent a SARR from unfairly being deprived of traffic and revenue by restricting future volumes to those forecast for the specific origin-destination pairs included in the base traffic group. *CP&L* at 250. By assuming that the base year traffic is “*representative* of the aggregate traffic that would be expected to move” over the SARR in the future (*id.*, emphasis supplied), the EIA production region approach accounts both for traffic that shifts from a base year SARR origin or route to another SARR origin or route, and for traffic that does not move over the SARR in the base year, but can be expected to shift to a SARR origin or route in future years. As the foregoing examples show, in the specific context of this case the *CP&L* rule accomplishes these very purposes, and avoids the artificial volume and revenue losses that result from CSXT's narrow focus on O-D pairs.

SECI's faithful application of the principles and methods endorsed in *CP&L* is neither “volume manipulation” nor an “abuse” of SAC principles,<sup>54</sup> and should be upheld.

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<sup>54</sup> CSXT Reply at III-A-50-51.



**(iv) CSXT's 2009 Volume "Corrections"**  
**Understate SFRR Coal Volumes**

The exercise which CSXT describes as a "correction of 2009 coal volumes"<sup>55</sup> is not a "correction" at all. Rather, it is a method for allocating 2009 SFRR coal volumes which already (and improperly) have been reduced by CSXT based on its flawed re-route and forecasting theories<sup>56</sup> among the base year destinations identified by SECI. Tellingly, however, CSXT's chosen method includes a step which replicates the production region forecasting rule adopted in *CP&L* and properly applied by SECI in this case. Additionally, the CSXT approach significantly understates 2009 coal volumes that would be available to the SFRR.

As CSXT acknowledges, the "starting point" for its allocation scheme is the "2009 volume figure" resulting from the changes previously proposed by CSXT, to which SECI already has responded.<sup>57</sup> CSXT Reply at III-A-51. Working from this lower total tonnage number, CSXT claims to account for all coal that would move over the SFRR system, including that which had shifted origins between 2008 and 2009, using the following three-step process:<sup>58</sup>

1. CSXT assigned 2009 traffic that moved between the same origin-destination pairs as in 2008, which CSXT alleges accounts for 89% of 2009 volumes;

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<sup>55</sup> CSXT Reply at III-A-51-53.

<sup>56</sup> See pp. III-A-9 and III-A-28, *supra*.

<sup>57</sup> See pp. III-A-15, *supra*.

<sup>58</sup> CSXT Reply at III-A-51-54.

2. CSXT divided its system into arbitrary “origin networks” based on the geographic boundaries of CSXT’s predecessor railroads.<sup>59</sup> In each origin network, CSXT compared tons originated in 2009 to those originated in 2008 from the base origins. Any excess tons were allocated to the 2008 origins.
3. For each shipper in the 2008 traffic group, CSXT identified coal from its 2009 total volume that originated from a “new” origin network within the same EIA coal production region from which such shipper sourced coal in 2008. CSXT then allocated this coal to mine origins within the same EIA region.

The key flaw in CSXT’s methodology – aside from its initial understated total volume – is that it fails to follow the mandate of *CP&L* that all traffic that could be expected to move over facilities replicated by the SFRR should be accounted for in the forecasting process. *CP&L* at 250. Specifically, CSXT’s allocation approach does not account for coal destined to shippers that received coal from origins within the ambit of the SFRR system in 2009, but did not do so in 2008; *i.e.* new shippers. Additionally, CSXT does not include 2009 coal destined to an existing SFRR shipper that originated in a new production region (or in some cases a new mine in the same production region), but would still traverse lines replicated by the SFRR.

#### 1) New Shippers

CSXT’s allocation theory proceeds on the apparent assumption that only shippers that received coal in 2008 should be counted for purposes of 2009 volumes. Thus, a ton that moved from a given origin in 2008 but not in 2009 is lost to the SFRR system, even if a new shipper that did not move coal over the SFRR in 2008 shifted

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<sup>59</sup> These boundaries are inherently arbitrary, as those railroads no longer exist, and their former lines have been absorbed into the unified CSXT system.

volumes in 2009 to routes that included the SFRR. CSXT's partial year 2009 traffic data<sup>60</sup> shows that nine (9) destinations that received coal in 2008 did not show any receipts in 2009.<sup>61</sup> CSXT's approach makes no accommodation for coal that might fill these voids, as required by *CP&L*.

SECI reviewed CSXT's partial year 2009 traffic information to identify additional new movements that would be available to the SFRR.<sup>62</sup> To facilitate the process, SECI used the 1Q09 train movement records provided by CSXT to assist in identifying routes for these new movements.<sup>63</sup> Because only one quarter of data was produced, SECI relied on ALK's PC \*Rail program to identify the route of movement for new destination shipments that occurred later in the year.<sup>64</sup> This review revealed {

} of coal moving to new destinations during the first three quarters of 2009

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<sup>60</sup> As discussed at pp. III-A-14 n.25 *supra*, CSXT claims to be relying on actual 2009 coal traffic data, but has only produced train and event car data for the first quarter of the year. CSXT's 2009 and 3Q09 volumes simply show up on a spreadsheet without underlying support.

<sup>61</sup> These locations include Boykin, FL; Brilliant, OH; Calvert City, KY; Chicago, IL; Edgemoor, DE; Gay, FL; Hayword, WV; Jacksonville, FL; and Lurgan, PA. See Rebuttal WP "CSXT 2009 Coal Actuals (Corrected).xlsx."

<sup>62</sup> CSXT's Reply e-workpapers identified those 2009 shippers that were new to the SFRR system. See CSXT Reply e-workpaper "CSXT 2009 Actuals.xlsx," worksheet "Eyepfit data." Column I. SECI uses CSXT's designation of new destinations in its Rebuttal analysis.

<sup>63</sup> See SECI Rebuttal e-workpaper "Routing of 2009 New Movements.xls."

<sup>64</sup> SECI Rebuttal e-workpaper "2009 Routing Maps.pdf." In many cases the new movement is obviously available to the SFRR as the coal originates at a mine directly served by the SFRR, or the new destination is along the SFRR's route of movement and would be terminated by the SFRR.

that could move over the lines of the SFRR, which were missed by CSXT's allocation scheme.

## 2) Movements to Existing Destinations

A second flaw in CSXT's approach is its failure to account for coal moving in 2009 to 2008 destinations from new coal production areas or, in some cases, from new mines within the same production region. If 2009 tons moving to a destination originated in a different production region than that which originated the tons in 2008, CSXT would exclude the traffic.<sup>65</sup> Under *CP&L*, however, this is incorrect. The tons moving to the new production region are not lost to the SFRR; they are deemed to have shifted to different portions of the SFRR system (those serving the new production region) while moving to the same 2008 destination.<sup>66</sup> *CP&L* at 250.

CSXT's approach would exclude new movements that specifically would be available to the SFRR. For example, in {

}

By 2009, {

} The SFRR serves both of

these mines, as well as delivering coal to the { } station, meaning that these movements are local to the SFRR system. Under CSXT's allocation system, because

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<sup>65</sup> CSXT Reply at III-A-53.

<sup>66</sup> CSXT also is incorrect in its assertion that SECI's approach would exclude these tons. CSXT Reply at III-A-53 n. 48. As noted in the text, the shift in tonnage to the new production region is captured by the SFRR through forecasted changes in volumes from origins in that region.

{ } did not take coal from the NAPP in 2008, the SFRR is precluded from moving this coal in 2009 even though the coal is local to the SFRR. CSXT's Reply evidence failed to include { } from which the SFRR would obtain all available revenue.

CSXT's approach also fails to account for coal moving from new mines within the same production region. As an example, in { } generating station received coal from the { } This movement would traverse the SFRR from Rockwood Junction, PA to Cumberland, MD, yet CSXT's approach failed to account for this movement in its 2009 coal volumes.

SECI reviewed the 1Q to 3Q 2009 shipments included in CSXT's workpapers and identified where it agreed with CSXT that a new 2009 origin should be included, where CSXT properly excluded a new 2009 origin, and where CSXT failed to include an origin whose traffic would be served by the SFRR. Based on this review, SECI identified an additional 0.9 million tons that CSXT incorrectly excluded from the SFRR system in 2009.<sup>67</sup>

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<sup>67</sup> See SECI Rebuttal e-workpaper "CSXT 2009 Coal Actuals (Corrected).xlsx."

**3) CSXT's "Match" Percentage is  
Overstated**

Based on its faulty allocation process, CSXT asserts that 89 percent of CSXT's 2009 actual traffic to the SFRR originated from the same origins as in 2008.<sup>68</sup> CSXT's claim is erroneous for two reasons. First, what CSXT claims is the SFRR's 2009 traffic is based on only three-quarters of the year, and much of that is not supported by base traffic and movement records. This alone undermines the veracity of CSXT's conclusion.

Second, as shown above, CSXT's faulty allocation system excluded traffic from the SFRR 2009 traffic group that properly should be recognized in determining SFRR coal volumes. As shown in Table III-A-1 if the { } of movements to new destinations and { } to current destinations from new origins are included, CSXT's percentage falls to 82% based on three-quarters of a year's worth of data. Annualizing these additional tons increases CSXT's 2009 traffic estimate from { } a figure which is very close to SECI's restated 2009 coal volumes. See III-A-1, *supra*.

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<sup>68</sup> See CSXT Reply at III-A-51.

**Table III-A-1**

**Incorporation of 2009 Actual CSXT Coal Shipments - -  
Allocation of 1Q09 – 3Q09 Tons to SARR O/D Pairs**

<u>Item</u> (1)	<u>Tons</u> (2)	<u>% of Total</u> (3)
<b>A. <u>CSXT Reply Allocation</u> 1/</b>		
1. Allocated Directly to SFRR ODs	44,891,027	89.3%
2. Remainder Allocated within Dest/Network	4,670,774	9.3%
3. New 2009 Dest/Network Combos 2	<u>710,458</u>	<u>1.4%</u>
4. Total 2009 1-3Q Actuals Assigned to the SFRR	50,272,259	100.0%
<b>B. <u>Corrected Allocation</u> 2/</b>		
5. Allocated Directly to SFRR ODs	44,891,027	81.7%
6. Remainder Allocated within Dest/Network 1/	4,670,774	8.5%
7. New 2009 Dest/Network Combos	710,458	1.3%
8. New movements to 2008 destinations improperly excluded by CSXT	874,256	1.6%
9. New destination improperly excluded by CSXT	<u>3,812,283</u>	<u>7.0%</u>
10. Total 2009 1-3Q Actuals Assigned to the SFRR	54,967,553	100.0%

1/ Source: CSXT Reply e-workpaper "Exhibit III-A-2 and III-A-3 Reply.xlsx," worksheet "Sumif2009"

2/ Source: SECI Rebuttal e-workpaper "CSXT 2009 Actuals (Corrected).xlsx"

Elsewhere in this Part III-A, SECI has demonstrated that the only adjustments to base and projected SFRR coal volumes that are necessary or appropriate relate to eliminating a small number of movements which should not have been included in the base year traffic group in the first place, and updating the 2009 tonnage figures to reflect the revised EIA-AEO 2009 forecast. No other "corrections" are required.

**(c) Contract Minimum Volumes**

CSXT alleges two (2) errors in SECI's accounting for minimum volume requirements in contracts between CSXT and its customers. First, CSXT claims that where its forecast is lower than the contract minimum, it should be assumed that the shipper will underperform and pay liquidated damages in lieu of shipping the requisite coal volumes. Second, CSXT proposes an adjustment to the allocation of the contract minimum for { } coastwise contract. *See* CSXT Reply at III-A-53.

CSXT's liquidated damages agreement should be rejected. A SAC analysis by and large is an *ex ante* analysis, and focuses on the best estimate of future traffic volumes. An individual contract minimum volume requirement is considerably more specific than a railroad's overall coal forecast, and given the choice between assuming that a shipper will elect<sup>69</sup> to comply with a contract covenant and assuming that it will not, the former is a far more likely scenario.<sup>70</sup> The Board previously has held that a shipper's normal course of business conduct is a better indication of future behavior than

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<sup>69</sup> Liquidated damages provisions generally apply only to shortfalls from contract minimums that are not excused by causes attributable to the railroad or to other forces beyond the reasonable control of the shipper.

<sup>70</sup> It is not reasonable to assume that CSXT's forecast contemplates a deliberate volume shortfall that the shipper elects in lieu of contract compliance. Moreover, legal precedent holds that a shipper's intentional failure to meet a minimum volume commitment is a deliberate contract breach, in which event the shipper's liability is not limited to the payment of liquidated damages. *See Public Service Company of Oklahoma v. Burlington Northern Railroad Company*, 53 F. 3d 1090 (10<sup>th</sup> Cir. 1995).



a general or external forecast. *See PSCo/Xcel* at 635. A contract minimum – negotiated and agreed to by the shipper and carrier – clearly falls into this category.

SECI has reviewed CSXT's data regarding { }, and accepts CSXT's re-allocation of minimum tonnages for this shipper.

**ii. Projected Non-Issue Coal Traffic, 2010-2018**

As with 2009 coal volumes, SECI's Rebuttal restatement relies upon EIA's April 2009 AEO Update to project non-issue SFRR coal traffic over the 2010-2018 time period.<sup>71</sup> *See CSXT Reply* at III-A-54. At this stage, however, there is no basis on which to commit to use of the 2010 EIA AEO, as CSXT advocates. *Id.* at III-A-56. That forecast will not be available as of the close of the evidentiary record in this case,<sup>72</sup> and the Board held in *WFA/Basin* that later forecasts will only be substituted if they show significant changes as compared to the forecasts of record. *See WFA/Basin* at 28. CSXT's Figure III-A-2 (*CSXT Reply* at III-A-56) purports to show a meaningful disparity between the April 2009 AEO and the 2010 Early Release AEO, but CSXT's focus on "Appalachian" data excludes Eastern Interior coal, which makes up about 20%

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<sup>71</sup> For the reasons explained at pp. III-A-3, *supra*, the EIA AEO properly should be used for all of 2009, as CSXT has failed to provide verifiable support for its so-called "actual" 2009 tonnages.

<sup>72</sup> CSXT's representations notwithstanding (*CSXT Reply* at III-A-56 n. 4), EIA was not scheduled to release to final 2010 AEO until April 14, 2010, one day before this Rebuttal submission was filed. Moreover, there are a number of other indexes (e.g. coal transportation rate and export coal forecasts) used by the parties which are unpublished components or companions to the AEO, and must be requested from EIA staff. Even if the AEO itself could have been employed, to use it without updating the other forecasts would produce inconsistencies in violation of Board precedent. *See TMPA* at 603, *Duke/NS* at 145; *Otter Tail* at B-4.

of the SFRR traffic group. It also includes export, industrial and coking coal, which tend to show more volatility in traffic levels than the utility steam coal which dominates the SFRR group. The 2010 Early Release shows a slight decline in Eastern Interior production through 2013, but higher production thereafter as compared to the 2009 AEO.<sup>73</sup> If coal production is displayed in aggregate across all regions served by the SFRR over the entire 2009-2018 DCF period, it is not likely that the difference between the 2009 AEO and the final 2010 AEO will be sufficiently pronounced to warrant a departure from the *WFA/Basin* rule.

**iii. Projected SGS Coal Traffic**

In its Opening Evidence, SECI forecasted coal volumes for SGS using SECI's most recent Fuel Supply Plan, which was prepared in the ordinary course of cooperative business and was included among SECI's workpapers. *See* SECI Opening at III-A-11. In Reply, CSXT suggests that SECI's forecast is "optimistic,"<sup>74</sup> and argues for a downward adjustment to levels approaching historic annual average consumption of coal and petcoke at the plant. *Id.* at III-A-59-61. CSXT's objections are meritless, and SECI's forecasted volumes should be used.

Noting that total consumption at SGS in 2009 was less than 3,000,000 tons, CSXT feigns amazement that forecasted levels for 2010 are slightly higher than 4,000,000 tons. *Id.* at III-A-57. As CSXT is well aware, however, SGS experienced

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<sup>73</sup> *See* SECI Rebuttal e-workpaper "AEO 2010 Early Release.xls."

<sup>74</sup> CSXT Reply at III-A-57.

multiple and prolonged generation unit outages in 2009, due to an unusual variety of equipment failures and external events (including fires). For the year, coal receipts at SGS were reduced by more than 1,100,000 tons as a result of these unanticipated events.<sup>75</sup> But for these extraordinary outages, 2009 receipts would have been right in line with the Fuel Supply Plan forecast for the year.

CSXT's professed ignorance as to the origin and purpose of the Fuel Supply Plan<sup>76</sup> also rings hollow, given the long history of the parties' commercial relationship and the degree to which CSXT elsewhere claims to have researched every detail of SECI's coal purchase and consumption patterns. The Fuel Supply Plan is prepared by SECI for use as a component in the cooperative's annual financial forecast, a data source for everything from bond rating agency reviews to SECI's long-term capital planning budgets. An example of its purpose and role is SECI's Ten Year Site Plan,<sup>77</sup> which was prepared in early 2009 for submission to the Florida Public Service Commission. Given its many and varied uses, there is a premium placed on accuracy in developing the Fuel Supply Plan.

The higher annual consumption figures shown in the Fuel Supply Plan as compared to past annual averages are attributable to several legitimate and significant

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<sup>75</sup> See SECI Rebuttal e-workpaper "2009 Outage tons.pdf".

<sup>76</sup> See CSXT Reply at III-A-58.

<sup>77</sup> See SECI Rebuttal e-workpaper "SGS Ten Year Plan.pdf" at 35 (Schedule 5). The forecast included in the Site Plan projects substantially higher volumes for several years than the forecast used by SECI in this case, because at the time the Site Plan was developed SECI had not yet made the decision to cancel plans to construct a third generating unit at SGS.

factors. First, population growth in Central Florida gradually has led to higher demands for generation among SECI's members, which in turn has enhanced SGS's status as a baseload station. CSXT is wrong in its assumption that "the maximum solid fuel consumed annually this decade represents a reasonable ceiling on the annual amount of such fuel it is likely to consume in the coming decade,"<sup>78</sup> because it does not account for increasing load factors at SGS during historic "off peak" and "shoulder" time periods.

Second, SECI has made modifications to the generating units at SGS which have improved its efficiency and marginally increased its capacity. These include the installation of new selective catalytic reduction systems, and replacement of low pressure turbines with newer, more efficient equipment. When combined with member load growth, these facilities improvements support the higher projected coal consumption levels reflected in the Fuel Supply Plan.

CSXT and its consultants have manufactured a forecast of future volumes to SGS based on the faulty assumption that past volumes cap projected requirements, and a made-for-litigation formula based simply on the arithmetic relationship between coal heating values and tons.<sup>79</sup> SECI's projected volumes, in contrast, are based on an internal forecast prepared in the ordinary course of business and relied upon for purposes unrelated to litigation. Under established Board precedent, SECI's projections of future

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<sup>78</sup> CSXT Reply at III-A-59.

<sup>79</sup> CSXT Reply at III-A-59-61. CSXT mistakenly refers to BTUs "burned" by SECI on an annual basis. *Id.* at III-A-59. BTUs are not combusted; they are a measure of the *output* of combustion.

coal receipts at SGS represent the better evidence of record. *See, e.g., Wisconsin P&L* at 970-971; *TMPA* at 603; *FMC* at 731; *WTU* at 662-63.

Based upon the foregoing and the adjustments referenced therein, the restated SFRR coal volumes presented by SECI on Rebuttal as compared to SECI's Opening Evidence and CSXT's Reply, are summarized in the following table

**Table III-A-2**

<b>Summary of Coal Traffic Restatement (Carloads)</b>			
<b>Year</b>	<b>SECI Opening</b>	<b>CSXT Reply</b>	<b>SECI Rebuttal</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>	<b>(4)</b>
2009	746,654	582,520	654,834
2010	731,338	583,302	638,156
2011	711,381	583,890	640,733
2012	711,158	592,239	651,137
2013	694,826	582,325	641,600
2014	665,669	568,651	618,908
2015	648,278	555,041	604,973
2016	636,090	544,939	592,605
2017	633,100	542,445	586,852
2018	627,969	537,482	579,277
Column (2) from "SARR carload forecast summary comparison 082309.xls"			
Column (3) from "Exhibits III-A-2 and III-A-3 Reply.xlsx"			
Column (4) from "Coal Traffic Forecast Rebuttal.xlsx"			

**b. Intermodal Traffic**

As with coal traffic, SECI developed intermodal traffic volumes for the SFRR by identifying movements between particular origins and destinations that traveled over lines replicated by the SFRR in 2008, then applied CSX Intermodal's ("CSXI") 2009 forecast volumes. For movements between O-D pairs that were not included in the forecast, SFRR volumes were reduced by half in 2009 and subsequent years to

conservatively reflect the business trend implied by the forecast. SECI Opening at III-A-11. On Reply, CSXT mischaracterizes SECI's methodology as "applying CSXI's forecast and then supplementing the SARR traffic with 2008 traffic that is not in the forecast. . .". CSXT Reply at III-A-63. CSXT argues that SECI is attempting to "take advantage of all of the growth while ignoring accompanying traffic losses." *Id.* The claim is without merit.

SECI's methodology does not "take advantage" of all growth shown in the CSXI forecast. SECI's forecast does not add *any* new intermodal traffic that the forecast projects would come on to lines replicated by the SFRR in 2009. Indeed, 12% of the traffic in the 2009 CSXI forecast was not considered in the SECI forecast because it moved between new O-D pairs that were not served in 2008.<sup>80</sup>

As CSXT acknowledges in its Reply, "[i]ntermodal traffic patterns, volumes, and commodity mix are all very dynamic, and they shift substantially over time." *Id.* at III-A-63. Although the CSXT (and by extension the SFRR) traffic group is dynamic in the real world, for purposes of identifying a traffic group, developing revenue divisions, and forecasting traffic and revenues for SAC purposes, the traffic group necessarily is fixed to reflect the latest available traffic group for which movement and revenue data were available at the time that SECI's Opening Evidence was presented. The CSXI forecast does not include routing data that permits the identification of new traffic that would traverse the SFRR, only O-D pairs or lanes that in the SFRR's case

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<sup>80</sup> See SECI Rebuttal e-workpaper "Intermodal Tons & Rev Rebuttal.xlsx" at level "Intermodal Forecast" cell AH24673.

often start and end off-system. Consistent with the principle endorsed in *CP&L* that the SFRR's base traffic group is *representative* of movements that could be expected to be handled by the SFRR in the future, a procedure is needed to ensure that the forecasting exercise is not a one-way street biased against SECI, where 2008 movements are dropped and no new movements can be added even though the CSXI forecast shows {

} By retaining those 2008 movements (at reduced levels and phasing them out over time), SECI was able to offset some of the foregone volumes associated with the "new" traffic which could not be tied to the base traffic period, and for which no routing data were provided by CSXT.<sup>81</sup> The reasonableness of this approach is further supported by the fact that the SFRR handles most intermodal traffic in overhead service, meaning that changes in O-D pairs on CSXT will not necessarily alter significantly the handling of the traffic on the SFRR's lines.<sup>82</sup>

CSXT did correctly identify an error in SECI's workpapers concerning application of the gradual reductions in traffic between 2008 O-D pairs that did not

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<sup>82</sup> Of course, the primary focus of the traffic and revenue analysis under the SAC test should be on changes affecting the SFRR.

appear in the 2009 forecast. CSXT Reply at III-A-64. In its Rebuttal Restatement, SECI halves the traffic between these pairs in each successive year of the DCF period.<sup>83</sup>

CSXT points out that station names in the traffic databases produced in discovery do not always match those in the CSXI forecasts,<sup>84</sup> and proposes a re-alignment between the data sets for four (4) locations. SECI accepts these changes. However, there are four (4) additional misaligned stations that CSXT did not correct. SECI's Rebuttal restatement includes the following as well:

1. MEMPHIS YALE, MEMPHIS (forecast) = MEMPHIS (2008 traffic data)
2. COUNCIL BLUFF (forecast) = COUNCIL BLUFFS (2008 traffic data)
3. HOWLAND HOOK (forecast) = NY CONTAINER TER (2008 traffic data)
4. GLOBAL 1 (forecast) = GLOBAL 1, GLOBAL 2, GLOBAL 3, LOGISTICS PARK CHIC (2008 traffic data)

CSXT next criticized SECI's approach to the development of 2009 intermodal volumes for movements that utilize more than one route. According to CSXT, it is improper for SECI to select a single, actual route for such traffic in the future rather than assuming that the 2008 distribution of routings would continue. CSXT Reply at III-A-66. CSXT also alleges that SECI's methodology leads to a double-count of forecasted traffic between certain points. *Id.* at III-A-65.

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<sup>83</sup> While CSXT noted the error, it did not correct it in its traffic group because CSXT ultimately removed all the subject traffic.

<sup>84</sup> Consistent with the general tenor of its Narrative, CSXT refers to these mismatches as SECI errors. SECI, of course, was only working with information and databases provided by CSXT.



As discussed at pp. III-A-7, *supra*, it has always been recognized that the proponent of a SARR can elect to consolidate and route traffic over one of several alternative routes that the defendant may use in actuality, without implicating the Board's guidelines concerning so-called "external re-routes." In the instant circumstances, SECI's election to use this option also is consistent with the limits of available data and with CSXT's own position regarding post-2008 traffic shifts.

The CSXI intermodal forecast produced in this case includes a { } field which contains no CSXT routing information. For CSXT-only moves, the reported route is { } and for interline moves, only the { }. Because CSXT provided no route information in this intermodal volume forecast, one cannot determine which CSXT route the future traffic would utilize. As CSXT points out, "[i]ntermodal traffic patterns, volumes, and commodity mix are all very dynamic, and they shift substantially over time." CSXT Reply at III-A-63. Thus, there is no reason to assume that the 2008 route distributions will hold for future years. Yet for purposes of the SFRR traffic forecast, CSXT locks in the 2008 routing distribution for all moves in 2009-2018. CSXI's methodology of holding 2008 route distributions constant over time in this part of its analysis belies its own characterization of the fluidity of intermodal traffic elsewhere. Consistent with *CP&L* and the limits of the CSXI forecast data, SECI selected an actual route used by CSXT in 2008 as representative of the route that future movements of traffic available to the SFRR could use, given the dynamic nature of intermodal traffic patterns. As CSXT

observes,<sup>85</sup> in some cases this may mean that multi-route traffic in 2008 is forecast to move entirely over a “minority” routing in future years. However, since it is impossible to develop a forecast that will exactly match future operation, this approach is consistent with *CP&L* and necessary to ensure that all traffic which would be available to the SFRR is counted. *CP&L* at 249-250. In contrast, the course advocated by CSXT – which effectively would freeze multi-route movements in their 2008 configuration – would exclude traffic that the SFRR most certainly could handle.

For example, an intermodal movement that used more than one route in 2008 and is included in the SFRR traffic group and forecast is a move from Atlanta, GA to Miami, FL. The vast majority of the 2008 Atlanta-Miami units moved along the Atlanta-Jacksonville-Miami route (which includes lines replicated by the SFRR), while a small minority moved along an alternative Atlanta-Miami route. There is no reason to assume the future routing distribution for this move (and the many others like it) will be exactly as it was in 2008, and it would be just as logical to assume that a single route would be used in future years. Since all the traffic is available to the SFRR, SECI aggregates it to the Atlanta-Jacksonville-Miami route such that all units are captured. Table III-A-3 below compares SECI’s handling of the 2009 Atlanta-Miami traffic to CSXT’s.

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<sup>85</sup> CSXT Reply at III-A-66.

**Table III-A-3**

<u>Move</u> (1)	<u>Origin</u> (2)	<u>CSX Origin</u> (3)	<u>CSX Dest</u> (4)	<u>Destinations</u> (5)	<u>Movements</u> (6)	<u>Percent</u> (7)	<u>SECI 2009 Opening And Rebuttal</u> (8)	<u>CSXT 2009 Reply</u> (9)
1.	Atlanta	Atlanta	Jacksonville	Miami	1,313	87.4%	937	819
2.	Atlanta	Atlanta	Miami	Miami	<u>189</u>	12.6%	<u>1/</u>	<u>118</u>
3.	O-D Total				1,502	100%	937	937
4.	SFRR Total				xxx	Xxx	937	819

1/ Not included in SFRR traffic group.

As shown, both SECI and CSXT identify 937 intermodal movements which actual records show can travel on a route replicated by the SFRR. However, only 819 of those units would be included by CSXT.

CSXT identified all traffic lanes on which SECI's forecasting methodology resulted in a double-count of volumes, totaling 24,249 units.<sup>86</sup> SECI has eliminated these double-counts in its Rebuttal restatement. CSXT's re-alignment of stations (and SECI's realignment of additional stations), referenced *supra*, revealed that more forecast traffic was able to be matched to base year movements than in SECI's Opening forecast. These adjustments reveal an additional 22,269 units (in 2009)<sup>87</sup> that should have been included in the Opening Evidence forecast.<sup>88</sup> The net impact of these adjustments is a reduction

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<sup>86</sup> See CSXT Reply e-workpaper "comp all IM units-open reb.xlsx" "at level "IM".

<sup>87</sup> The 22,269 units include 21,158 units picked up from station name reconciliation and an additional 1,111 units picked up from inclusion of movements where the CSXT origin/destination was listed in the CSXT forecast data in place of the movement origin/destination, as discussed in the following paragraph of the text.

<sup>88</sup> See CSXT Reply e-workpaper "comp all IM units-open reb.xls" at level "IM."

of 1,980 intermodal units in the Rebuttal restatement (461,968 units on Opening and 459,988 units after adjustment).

Finally, in evaluating CSXT's changes to station location names to reconcile the incongruent 2008 traffic and 2009-2013 forecast data, SECI discovered that while approximately 93.2% of the forecast data records are presented on a movement origin to movement destination basis, 6.8% of these records replace the movement origin with a CSXT origin and/or replace the movement destination with a CSXT destination. Most of these instances are not relevant, as the affected traffic does not traverse the SFRR. However, for certain volumes moving to or from New Orleans, the shift results in an understatement of SFRR volumes along some lanes. A summary of the corrected volumes used in the Rebuttal restatement is shown below.

**Table III-A-4**  
**Summary of Additional New Orleans Intermodal Volumes**

From (1)	To (2)	2009 Volume (3)
New Orleans	Atlanta	224
New Orleans	Tampa	869
New Orleans	Savannah	18
Total		1,111

Source: "Intermodal Tons & Rev Rebuttal.xlsx" level "All 08 IM OD" range C2514:L2528.

**c. General Freight Traffic**

CSXT's claims regarding 2009 general freight volumes for the SFRR largely track the carrier's criticisms with respect to intermodal traffic,<sup>89</sup> and are answered

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<sup>89</sup> CSXT Reply at III-A-68-77. CSXT adds remarks directed at SECI's operating plan and expenses as relate to general freight service (*id.* at III-A-69-70), which SECI addresses in Part III-C.

in this section. As a threshold matter, however, SECI notes one set of adjustments proposed by CSXT in connection with intermodal traffic which also apply to general freight, but are absent from CSXT's critique; namely, the re-alignment of station names which are mismatched between the 2008 traffic data and the forecast. In its Rebuttal restatement, SECI made the following changes to properly align these stations:

1. RIVER TERM (forecast) = RIVER TERMINAL (2008 traffic data)
2. E CHICAGO (forecast) = EAST CHICAGO (2008 traffic data)
3. FORT LAUDERDALE (forecast) = FT LAUDERDALE (2008 traffic data)
4. MOUNT MORRIS (forecast) = MT MORRIS (2008 traffic data)
5. E ST. LOUIS (forecast) = EAST ST. LOUIS (2008 traffic data)
6. NEW WESTMINST (forecast) = NEW WESTMINSTER (2008 traffic data)
7. THUND BAY EL (forecast) = THUNDER BAY (2008 traffic data)
8. E MODESTO (forecast) = EAST MODESTO (2008 traffic data)
9. SMITH FALLS (forecast) = SMITHS FALLS(2008 traffic data)
10. W LAKE CHARLES (forecast) = WEST LAKE CHARLES (2008 traffic data)
11. KELLYS (forecast) = KELLY'S (2008 traffic data)
12. LORIGINAL SPUR (forecast) = L'ORIGINAL SPUR (2008 traffic data)
13. WALKERVILLE (forecast) = WALKERVILLE JCT (2008 traffic data)
14. SAN BERNARDIN (forecast) = SAN BERNARADINO (2008 traffic data)
15. PRAIRIEVIEW (forecast) = PRAIRIE VIEW (2008 traffic data)
16. N PORTLAND (forecast) = NORTH PORTLAND (2008 traffic data)

17. CASA COLARADA DE AB (forecast) = CASA COLARADA (2008 traffic data)

18. N LITTLE ROCK (forecast) = NORTH LITTLE ROCK (2008 traffic data)

19. FORT WORTH (forecast) = FT WORTH (2008 traffic data)

20. FORT BLISS (forecast) = FT BLISS (2008 traffic data)<sup>90</sup>

CSXT first claims that SECI inflated general freight volumes by retaining movements that were not identified in the 2009 forecast, on a declining annual volume basis. CSXT Reply at III-A-70-71. As with intermodal traffic, CSXT ignores the practical reality and rule of *CP&L* that for purposes of a SAC analysis, the base year (2008) traffic group must be deemed representative of the aggregate traffic that is expected to be available to the SFRR in future years, if the effects of dynamic shifts in origins are to be accommodated. The CSXT forecast includes movements in 2009 and beyond which were not present in 2008, but would move over the SFRR.<sup>91</sup> However, since no routing information is included in the forecast volume data, it is impossible to show with specificity which new movements would (or would not) traverse lines replicated by the SFRR. SECI's approach at least partially captures this traffic, and thus

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<sup>90</sup> Source: SECI Rebuttal e-workpaper "GF mismatch.xlsx" level "mismatch."

<sup>91</sup> For example, the CSXT forecast includes approximately {

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addresses the shifting and unknown future patterns of general freight traffic.<sup>92</sup>

*CP&L* at 250.

Second, while not directly acknowledged in CSXT's criticism of SECI's traffic selection, CSXT makes a backdoor attempt to change SECI's traffic group. As discussed at III-D-176 to III-D-179, CSXT takes exception to (but accepts with modification) SECI's use of a "manifest line-haul credit" for SFRR's handling of non-revenue cars."<sup>93</sup> CSXT modified the manifest line-haul credit by removing from the SFRR traffic group all non-SARR empty cars, based on the explanation that "logic dictates that CSXT would not pay the SFRR for moving empty cars where CXST is not receiving the revenue for the loaded movement." *See* CSXT Reply at III-C-178.

The problem with CSXT's removal of the non-SARR empty cars is two-fold. First, the manifest line-haul credit is calculated based on gross-ton miles, which necessarily include the tare weight of empty cars. Exclusion of non-SARR empty cars from the SFRR system diminishes the SECI traffic group and the revenue credits

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<sup>92</sup> CSXT's claim that this approach is an "illogical manipulation" of the CSXT forecast is disingenuous. CSXT Reply at III-A-71 n. 70. The forecast is the only database available to project SFRR general freight traffic, and it does not contain the routing data needed to predict with specificity the new movements that would be handled by the SFRR. CSXT's "solution" is to drop the 2008 movements and ignore the new traffic, based on its strict O-D pair forecast scheme. In light of the aggregate growth expected to occur, this result – and not SECI's application of the *CP&L* rule – is an illogical manipulation.

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available to the SFRR. Second, as CSXT itself acknowledges, “Board/ICC precedent has made it clear that it is the prerogative of the complaining shipper to select what traffic to include in its SAC presentation, and SECI clearly included the non-revenue traffic on its SFRR trains.” *See* CSXT Reply at III-D-178. Based on this Board/ICC precedent, CSXT is not at liberty to remove the non-SARR empty cars for the SFRR traffic base in an effort to reduce the SFRR traffic and associated manifest line-haul credits. CSXT’s exclusion of the non-SARR empty cars is more fully addressed in Part III-D-9 of this Rebuttal.

Next, and again echoing its criticism of SFRR intermodal volumes, CSXT claims that SECI double-counted future general freight movements by applying the “full forecast volume” to each of several routes for a single movement. CSXT Reply at III-A-71. CSXT is correct that there were a small number of such double-counts. In its Rebuttal restatement, SECI has eliminated these few double-counts, which amount to 3.8% reduction in total carloads in 2009.<sup>94</sup>

Relying on information received from one of its shippers (Georgia Power) which was not available to SECI prior to the submission of Opening Evidence, CSXT

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<sup>94</sup> SECI has eliminated all double-counts from the Rebuttal analysis. SECI identified 18,922 carloads as being double-counted in 2009 after SECI made changes resulting in better alignment between data sets. However, the improved reconciliation of station names between the traffic data and the forecast data resulted in the identification of an additional 1,336 carloads that were not included in Opening, but that would have been if the provided data sets were congruent. The net impact is that the 2009 carloads identified in Opening (459,062 units) were reduced by 18,922 carloads and increased by 1,336 carloads, resulting in 2009 rebuttal carloads totaling 441,477. *See* Rebuttal e-workpaper “comp all IM units – open reb.xlsx” at level “GF.”



proposes an adjustment to the volumes of synthetic gypsum forecasted to move from Georgia Power's Bowen plant over the 2009-2018 DCF period. CSXT Reply at III-A-72-74.95 SECI accepts the adjustment, and incorporates it in its Rebuttal restatement.

CSXT next claims that it "significantly underestimated the more acute production and shipment declines in the automotive and metals sectors" when it produced its January 2009 general freight forecast. CSXT Reply at III-A-75. Citing public data which shows system-wide year over year declines in the range of 40% from 2008-2009, CSXT adjusts the SFRR auto and metals traffic figures using the Global Insight forecasts for (1) light vehicle production and (2) iron and steel production. CSXT's stated rationale for this adjustment is that because these two forecasts were among the many sources upon which CSXT relied in formulating its January 2009 volume forecast, it would be appropriate to adjust the SFRR forecast for auto and metals traffic by the change in those forecasts between January and October 2009. *Id.* at III-A-76. These adjustments are unwarranted.

CSXT offers no evidence indicating whether and to what extent the January 2009 Global Insight forecasts for light vehicle production and iron and steel production played a significant role in its development of the CSXT January 2009 general freight forecast. However, the idea that a railroad company with generations-long relationships with high volume shippers of high-value commodities (such as auto manufacturers)

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<sup>95</sup> Again, CSXT gratuitously claims that SECI "ignores" facts to make "unrealistic, gross overstatement[s]." CSXT Reply at III-A-73-74. SECI cannot seriously be considered to have ignored facts that were not available to it, and hardly deserves to be criticized for agreeing to an adjustment once the validity of the adjustment is shown.

would rely heavily on a generic, industry-wide auto production forecast (rather than input from its marketing department or the shippers themselves) in its development of future volume estimates is dubious. Adjusting a forecast that presumably was developed after careful consideration of multiple inputs solely by reference to revisions in a single input is not reasonable.

An additional problem with CSXT's proposed adjustment is that it would apply the "light vehicle adjustment" to all STCC 37 moves, and the "iron and steel production" adjustment to all STCC 33 moves. STCC 37 (Transportation Equipment) comprises light and heavy motor vehicles, aircraft, ships and boats, railroad equipment, motorcycles, bicycles, guided missile or space vehicle parts, miscellaneous transportation equipment including trailers and campers, and parts for all of the above. Similarly, STCC 33 (Primary Metal Products) comprises both ferrous metals (iron and steel) and non-ferrous metals, including copper, brass, bronze, aluminum, magnesium, zinc, lead, nickel and titanium. CSXT's proposed macro adjustment (downward in all cases) very likely will distort actual forecasted volumes for many (if not most) of these specific commodities. Moreover, CSXT failed to produce any Global Insight forecast data to support its adjustment, which when combined with the fact that CSXT continues to rely on its 2009 forecasts for all other non-coal commodity groups raises a serious question whether the carrier is selectively applying its own forecast (or not) in order to achieve a desired result; *i.e.*, reduced SFRR traffic volumes.

Recent data shows strong recovery in rail volumes, and analysts are now projecting double-digit growth in non-coal volumes in 2010 and beyond. For example, in

the March 25, 2010 “UBS Railroads Weekly” publication, automotive carloads show a year-over-year 31.2% increase to date, and metals carloads show a 37.9% year-over-year increase to date. In contrast, CSXT’s suspect adjustment results in an 18.1% year-over-year increase in automotive carloads (understated by 42%) and a 23.2% year-over-year increase in metals carloads from 2009-2010 (understated by 39%). SECI submits that CSXT’s adjustment is unsupported and unreliable, and rejects it for purposes of the Rebuttal restatement. That restatement shows the following with respect to SFRR general freight volumes:

**Table III-A-5**

<b><u>Summary of General Freight Traffic Restatement (Carloads)</u></b>		
<b><u>Year</u></b>	<b><u>SECI Opening</u></b>	<b><u>SECI Rebuttal</u></b>
<b><u>(1)</u></b>	<b><u>(2)</u></b>	<b><u>(4)</u></b>
2009	459,062	441,477
2010	443,812	432,012
2011	460,234	449,460
2012	471,481	461,206
2013	484,786	474,536
2014	500,752	487,729
2015	519,219	502,460
2016	540,323	518,609
2017	564,424	536,163
2018	592,094	555,177
Column (2) from "SARR carload forecast summary comparison 082309.xls"		
Column (3) from "CSXT Carload Forecast Rebuttal.xlsx"		

**d. Peak Year Traffic**

After the adjustments discussed in detail *supra*, SECI’s Rebuttal restatement shows that the peak traffic year for the SFRR continues to be 2018, the final

year of the DCF Model. Drawing together all volumes for the three general categories of SFRR traffic, the Rebuttal restatement of SFRR's peak year volumes is as follows:

**Table III-A-6**

<b>Summary of Total SFRR Traffic Restatement (Carloads)</b>		
	SECI	SECI
<u>Year</u>	<u>Opening</u>	<u>Rebuttal</u>
(1)	(2)	(3)
2009	1,312,160	1,202,299
2010	1,286,747	1,181,200
2011	1,288,394	1,205,711
2012	1,307,959	1,236,694
2013	1,310,589	1,246,155
2014	1,303,334	1,242,616
2015	1,310,634	1,249,671
2016	1,326,080	1,260,020
2017	1,354,043	1,278,711
2018	1,383,769	1,297,377
From "SFRR III-A volume tables.xlsx" at level "Combined Table"		

### **3. Revenues (Historical and Projected)**

As CSXT acknowledges in its Reply, the differences between the parties' positions with respect to SFRR revenues primarily are attributable to differences in their estimates of SFRR traffic volumes.<sup>96</sup> As shown *supra*, CSXT employed a number of artifices and unsupported or improper adjustments to artificially depress SFRR volumes and, thus, revenues. However, CSXT independently proposes a number of adjustments to the calculation of rates and revenues themselves, which are described at pages III-A-79 through III-A-101 of its Reply Narrative. In a few instances, CSXT has suggested

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<sup>96</sup> CSXT Reply at III-A-79 n. 79.

changes or adjustments which are legitimate, and these have been adopted by SECI in the Rebuttal restatement. For the most part, however, CSXT's criticisms are without merit, and should be rejected for the reasons enumerated in this section.

**a. Coal Traffic Revenues**

CSXT generally concurs in SECI's methodology for calculating and forecasting non-issue coal traffic rates. This includes SECI's use of contractual rate escalation provisions for shipments moving under existing contracts, the use of projected rate changes for the years 2009 to 2013 found in CSXT's 2009 Railcar forecast for shipments that were not moving under contract between 2009 and 2013, or for shipments with contracts expiring prior to 2013, and the use of EIA's April 2009 AEO Transportation Rate Escalator to adjust post-contractual rates for the years after 2013. *Id.* at III-A-79. Nevertheless, CSXT did propose several revenue adjustments, most of which are improper or unfounded. CSXT's suggested changes are discussed below.

**i. Use of Alleged Actual 2009 Revenue**

CSXT's "primary adjustment" was to substitute what it claims are actual 2009 coal rates for the forecasted rates relied upon by SECI. *Id.* CSXT purports to use rates which correspond to its tonnage records for 1Q-3Q09, and an average of these three quarters' rates as a surrogate for 4Q09 rates. For those 2009 movements that did not take place in 2008, CSXT states that it assigned the rates per ton calculated and used by SECI in its Opening coal traffic and revenue forecast. *Id.* at III-A-80. There are several flaws in CSXT's approach to 2009 coal rates.

First, as explained at pp. III-A-34, *supra*, CSXT provided no support or back-up data for its 2009 coal traffic volume and revenue numbers, which simply were presented on a spreadsheet filled with hard-coded figures. The lack of evidentiary support prevents SECI and the Board from evaluating the accuracy of CSXT’s traffic and revenue claims.

Second, CSXT erroneously assumed that rates for 4Q09 would equal the average of rates for the first three quarters of the year. As CSXT’s Reply workpapers show and as summarized in Table III-A-7, three of the primary indexes used by CSXT to adjust coal rates increased in 4Q09:<sup>97</sup>

Table III-A-7			
Change In Major Railroad Indexes 3Q09			
<u>Index</u> (1)	<u>3Q09 Index</u> (2)	<u>4Q09 Index</u> (3)	<u>Percent Change 1/ (4)</u>
1. Rail Cost Adjustment Factor – Unadjusted For Productivity	0.938	0.996	+6.1%
2. Rail Cost Adjustment Factor – Adjusted For Productivity	0.426	0.450	–5.6%
3. All Inclusive Index – Less Fuel (With Forecast Error)	105.9	107.0	+1.0%
1/ Column (3) ÷ Column (2).			

SECI’s Opening Evidence demonstrated that {  
} CSXT’s failure to account for

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<sup>97</sup> See CSXT Reply e-workpaper “Coal Revenue Forecast Reply.xlsx,” worksheet “Index Forecast.”

<sup>98</sup> See SECI Opening e-workpaper “Coal Revenue Forecasts.xlsx,” worksheet “Contract Adjustments.” {

the increases in these indexes in 4Q09 inevitably leads to an understatement of non-issue coal traffic revenues.

Third, CSXT is not entirely correct in its assertion that it used the rates per ton presented in SECI's Opening Evidence for those O-D pairs which did not move coal in 2008 but were included in SFRR's 2009 coal volumes. CSXT only used SECI's 2009 rates in those instances where CSXT's limited allocation scheme assigned tons to a 2008 O-D pair that did not have 2009 movements. In those instances where new movement tons were assigned to an O-D pair that *did* show traffic in 2009, CSXT used its erroneous 1Q-3Q09 average rate. As discussed above, this approach clearly understates SFRR coal revenue.

The 2009 movements to {

} plant provide an example of the flaw in CSXT's approach.

CSXT's workpapers indicate that { } transported coal from two mines in 2008: { }<sup>99</sup>

CSXT's workpapers also show that in 2009, { } continued to take coal from {

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}

<sup>99</sup> See CSXT Reply e-workpaper "Exhibits III-A-2 and III-A-3 Reply.xls" worksheet "Actual 09 Vols.," rows 248 and 249.

} CSXT's

allocation approach assigned the {

} Because { }

and therefore had no actual 2009 rate per ton, CSXT utilized SECI's forecast of the

{

} CSXT's approach assigns the {

} rates are

applied not only to existing O-D pairs, but to new 2009 movements. A number of

additional examples<sup>101</sup> of this revenue understatement appear in CSXT's workpapers.<sup>102</sup>

**ii. Issue Traffic Rates**

As a result of internal miscommunication, SECI projected rates for the issue traffic without accounting for CSXT's "banking" of reductions in the RCAF-U that would bring the SECI rate below the level set by Tariff CSXT-32531 as of January 1,

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<sup>100</sup> *Id.* at row 251.

<sup>101</sup> See CSXT Reply e-workpaper "Exhibits III-A-2 and III-A-3 Reply.xlsx," worksheet "Traffic by Origin-Destination," Columns AR to AT.

<sup>102</sup> SECI agrees that SECI's Opening rate calculations excluded base rate calculations for five (5) movements to { } that should have been included (*see* CSXT Reply at III-A-82). Upon further review, one (1) movement each to { } also were excluded inadvertently. SECI has corrected the rates in its Rebuttal restatement.



2009, and applying the forgone rate reductions as credits to offset future RCAF-U increases. SECI applies the banking feature in its Rebuttal restatement.<sup>103</sup>

**iii. Fuel Surcharges on Coal Traffic**

CSXT generally accepted SECI's fuel surcharge revenue calculations for SFRR coal traffic, including the assumption that following contract expiration coal traffic would generate surcharge revenue based on CSXT's general HDF surcharge tariff provisions. CSXT Reply at III-A-82-83. However, CSXT made two adjustments to SECI's coal fuel surcharge calculations which merit response.

First, CSXT reduced surcharge revenue for two (2) shippers based on the claim that their contract provisions set higher strike prices for fuel surcharge application { } than the \$2.00 per gallon price currently included in CSXT's Fuel Surcharge Publication 8661-B.<sup>104</sup> The Board should reject this adjustment, because CSXT did not also produce revised fuel surcharge provisions for *all* 2009 contract renewals. Previous decisions have rejected carriers' reliance on selected sub-sets of traffic and contract information, on the reasonable ground that a litigant should not be able to invoke partial data that advances its case without producing complete information to determine whether there is other data in the same category that cuts the other way. *See Wisconsin P&L* at 979; *Duke/NS* at 144-145. Without complete production of fuel surcharge information for all coal contracts that were renewed in 2009, there is no way to

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<sup>103</sup> See SECI Rebuttal e-workpaper "Coal Revenue Forecast Rebuttal.xlsx." worksheet "Att 1 p.1 CSXT 32531 Rates."

<sup>104</sup> CSXT Reply at III-A-83.

tell if CSXT selectively included two (2) contracts which lowered the SFRR's surcharge revenue while ignoring other contracts that would increase it.

Second, CSXT notes that SECI understated fuel surcharge revenues for 2015 through 2018 by holding surcharges constant at 2014 levels. CSXT Reply at III-A-83. SECI agrees that there was an understatement, though it is substantially less than the \$94,000,000.00 claimed by CSXT. SECI adjusts its Rebuttal restatement accordingly.<sup>105</sup>

**b. Intermodal Traffic Revenues**

CSXT offers criticism of SECI's Opening Evidence on the subject of intermodal freight revenues in two areas: the determination of rate increases from 2008-2009, and the calculation of fuel surcharge revenues on certain movements. CSXT Reply at III-A-83. SECI responds to each, in turn.

**i. Rate Increases from 2008-2009**

SECI concurs with CSXT that an adjustment should be made to the calculation of 2009 intermodal revenues, to avoid confusion between total and net revenues when drawing comparisons between 2008 and 2009 revenues. CSXT Reply at III-A-84. CSXT suggests an acceptable procedure, "focused on the CSXI traffic that [SECI] actually selected for the SFRR." *Id.* at III-A-85. However, CSXT did not follow its own suggestion, and instead appeared to dismiss the issue of any revenue growth at all between the two years.

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<sup>105</sup> See SECI Rebuttal e-workpaper "Coal Fuel Surcharge Forecast Rebuttal.xlsx."

CSXT's Reply compares the average revenues for *all* IN001 ("Core") traffic in the 2008 group { } to that for *all* IN001 ("Core") traffic in the 2009 forecast { }, then concludes that the lack of "material growth" does not justify any change in rates. *Id.* at III-A-86. Even using CSXT's numbers, close to a { } would be appropriate. However, the *actual* SFRR intermodal traffic is a subset of the "Core" traffic, and when average rates for that subset are used (the CSXT methodology), the result is { }<sup>106</sup> SECI applied this rate of change in its Rebuttal restatement.

**ii. Fuel Surcharges**

CSXT agrees that for intermodal movements under provided contracts SECI calculated the fuel surcharges according to the contract provisions during the contract term, and CSXT accepts SECI's methodology and calculations for this group of moves in this time period. CSXT Reply at III-A-86.

For movements under contracts that were not produced and for contract movements occurring after contract expiration, SECI applied the terms of CSXT's general fuel surcharge program as published in its tariffs. This is the same methodology that SECI used – with CSXT's approval – for surcharges on coal traffic.<sup>107</sup> As applied to

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<sup>106</sup> See SECI Rebuttal e-workpaper "Intermodal Tons & Rev. Rebuttal.xlsx" at level "Intermodal Forecast" cell Z24689.

<sup>107</sup> "SECI assumed that SFRR coal traffic movements would generate fuel surcharge revenues consistent with what CSXT collected in the real world through expiration, after which all coal traffic would generate surcharge revenues based on

intermodal traffic, however, CSXT rejects the methodology and argues for use of a weighted average fuel surcharge based on the movements under provided contracts, which it applies to all movements moving under non-provided contracts or tariffs. *Id.* at III-A-87. CSXT also assumes that for movements under provided contracts, after contract expiration the extant fuel surcharge terms will be incorporated in a subsequent contract. *Id.* at III-A-89-91. Not surprisingly, CSXT's approach { } fuel surcharge revenue for the SFRR. The Board should decline to adopt it.

CSXT's rationale for reliance on the weighted average surcharge rates in the provided contracts rests on its claim that "SECI apparently believes it selected a representative sample of price authorities governing SFRR intermodal traffic . . . ." *Id.* at III-A-87. This is not the case, as CSXT itself acknowledges. *Id.* at III-A-86 n. 84.<sup>108</sup> The 40 contracts selected by SECI were those applicable to the highest volume intermodal movements chosen from an array of CSXT volume data. The highest volume intermodal shippers possess the greatest amount of leverage in contract negotiations with CSXI/CSXT, and as such are very likely to obtain more favorable contract terms than shippers of smaller volumes. To assume that the reduced surcharge rates negotiated by high-volume shippers would be equally available to low-volume shippers completely

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CSXT's HDF program. CSXT generally accepts SECI's approach for determining the projected base revenues and fuel surcharges for the SFRR coal traffic. . . ." CSXT Reply at III-A-83.

<sup>108</sup> CSXT refers to a footnote in SECI's Opening Narrative (SECI Opening at III-A-30 n. 34) in which the word "representative" was ambiguously included. However, SECI did not claim to have selected a statistically valid sample that could support the kind of inputted comparative conclusions that CSXT draws, as CSXT well knows.

ignores market dynamics. With no other data sources available, SECI used the base intermodal fuel surcharge rates as published in CSXT's tariffs.

CSXT is correct that given the large number of intermodal movements at issue and the burden involved in producing more than a portion of the corresponding rate authorities, determining such revenues for the SFRR "requires application of some assumption about all of the other traffic SECI selected for the SFRR." *Id.* at III-A-88 n. 86. However, the assumption offered by CSXT – that low volume shippers with little bargaining power would be able to negotiate the same favorable departures from the standard CSXT surcharge tariff as high volume shippers – is unrealistic and by definition introduces bias.<sup>109</sup> SECI's approach, which is identical to that used with CSXT's concurrence is calculating surcharges on coal traffic, is objective and consistent with established SAC procedures.

**c. General Freight Revenue**

CSXT does not take issue with SECI's approach to the calculation of line haul rates and revenues for general freight traffic. CSXT Reply at III-A-91. Its criticisms are limited to the handling of fuel surcharge revenues, and are addressed below.

SECI accepts CSXT's corrections to revenues on certain contract movements which are not subject to fuel surcharges, or are subject to fuel surcharge

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<sup>109</sup> Applying trends observed from data points representing a discrete group (in this case high-volume shippers with relatively greater market power) to members of some other separate group (in this case low-volume shippers with relatively less market power) amounts to improper extrapolation and biases the result.

provisions with strike prices higher than prevailing prices during the analysis period.

CSXT Reply at III-A-91-92.<sup>110</sup> These corrections are reflected in the Rebuttal restatement.

For movements under contracts that were not sampled, SECI applied a weighted average fuel surcharge from the sampled movements through 2010, then applied the published base fuel surcharge rate for the 2011-2018 period. CSXT incorrectly opines that SECI “assumed – without evidence or support – that all SFRR general freight traffic for which SECI did not review a rate authority would pay { } fuel surcharges. . . .” *Id.* at III-A-93. CSXT then proposes that the weighted average of contract surcharge rates be applied to the full SAC analysis period. CSXT has mischaracterized SECI’s methodology, and its “solution” artificially underestimates surcharge revenue. SECI’s workpapers clearly show that the basis for application of the weighted average contract surcharge rate to non-sampled movements within each stratum was the weighted average *contract term* for sampled movements with the stratum. In all three cases, the average term expiration occurred in 2010.<sup>111</sup> Sample results properly should be applied to non-sampled movements only during the time periods that the sampled contracts are in effect. It is CSXT’s approach – which applied the sample results to a time period outside the sample observations – which is arbitrary.

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<sup>110</sup> Because the complete data set is available, acceptance of this correction is appropriate, in contrast to CSXT’s selective identification of the two (2) coal contracts discussed at III-A-64, *supra*.

<sup>111</sup> See SECI Rebuttal e-workpaper “Contract Summary GF Rebuttal.xlsx” level “Compute Avg. FSC.”

Finally, CSXT challenges SECI's application of general default fuel surcharge terms to general freight contract movements after the expiration of the contract.<sup>112</sup> Advocating a presumption that the surcharge terms set forth in the contracts will be renewed on the same terms in a new agreement, CSXT asserts that it is "unreasonable to assume that upon expiration of a contract providing for fuel surcharges that are different from the published default common carrier tariff provision, fuel surcharge provisions of a bargained-for contract would immediately convert to the { } published common carrier traffic rate. . . ." CSXT Reply at III-A-94.

One need look no farther than { } to confirm the fallacy of the notion that CSXT would simply agree to renew an expiring contract on its then-current terms without seeking to exploit any available leverage to increase revenue. A key reason why parties enter into contracts is to temporarily hedge against market volatility and supply-demand shifts. Upon expiration of a contract, parties negotiate anew against the backdrop of their prevailing balance of leverage. The claim that CSXT would not attempt to improve its economic position vis-à-vis a shipper upon expiration of the shipper's contract, and hold the terms of its published tariffs as default terms should no agreement be reached, is simply not credible.

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<sup>112</sup> As noted *supra*, this is the same approach that CSXT concurred in when it was applied to coal traffic.

#### 4. Revenue Divisions on Cross-Over Traffic

CSXT eliminated 21 coal moves from its Reply traffic group and altered the SFRR routing, interchange locations, and mileages for an additional 149 coal moves and 13 general freight moves based on its claims that SECI had externally re-routed 183 movements on Opening. As discussed at pages III-A-11-13 *supra*, no changes are required or appropriate for all 13 general freight movements, and 57 coal movements. SECI has removed 10 coal movements which newer data show do not traverse SFRR segments from its Rebuttal traffic group. For the remaining 103 coal movements, SECI has made adjustments to its evidence and workpapers to reflect routing, interchange location, and mileage modifications in response to CSXT's Reply data.

CSXT argues that SECI has not met the requirements of *WFA/Basin II* of “(i) ‘demonstrating how crossover revenues should be allocated in accordance with the defendant carrier's *actual* costs of providing the transportation service’ and without (ii) ‘providing an alternative SAC analysis where there are no off-SARR reroutes.’” CSXT Reply at III-A-97. However, with the adjustments described above, *all* SFRR traffic uses *actual* routes used by CSXT in the base year, and thus reflects *actual* CSXT costs. As the Rebuttal traffic group includes no external re-routes on the SFRR, there is no need to provide an alternative SAC analysis.

CSXT used the Board's 2008 URCS data (which was not available at the time that SECI filed its Opening Evidence) to calculate ATC percentages (CSXT Reply at III-A-97). SECI agrees that using the final 2008 URCS is appropriate, and has recalculated the 2008 variable costs used to calculate its ATC percentages. SECI also has



corrected its calculation of fixed costs to apply the fixed costs for all portions of each movement on a per-ton basis, and has adjusted its density calculation to use actual CSXT densities for all portions of cross-over movements (*Cf.* CSXT Reply at III-A-98-99).

Finally, CSXT noted that for general freight shipments, SECI's Opening workpapers showed "zero" on-SARR fixed costs, due to a spreadsheet look-up error (CSXT Reply at III-A-100). SECI has corrected the Rebuttal calculation to apply the fixed costs for all portions of each movement on a per-ton basis.

After making the tonnage and revenue adjustments described above, SECI's Rebuttal restatement shows the following adjusted revenues (including a comparison to the understated revenues in CSXT's Reply Evidence).

<b>Table III-A-8</b> <b><u>SFRR Revenues (\$ millions)</u></b>				
<b><u>Year</u></b> <b>(1)</b>	<b><u>SECI</u></b> <b><u>Opening</u></b> <b>(2)</b>	<b><u>CSXT</u></b> <b><u>Reply</u></b> <b>(3)</b>	<b><u>SECI Rebuttal</u></b> <b>(4)</b>	<b><u>Difference</u></b> <sup>1/</sup> <b>(5)</b>
<b>2009</b>	\$1,116.1	\$ 942.0	\$1,048.0	\$106.0
<b>2010</b>	\$1,250.8	\$1,035.4	\$1,182.2	\$146.8
<b>2011</b>	\$1,272.0	\$1,058.5	\$1,259.3	\$200.8
<b>2012</b>	\$1,360.7	\$1,153.4	\$1,350.0	\$196.6
<b>2013</b>	\$1,488.0	\$1,274.1	\$1,459.0	\$184.9
<b>2014</b>	\$1,571.0	\$1,361.6	\$1,531.3	\$169.7
<b>2015</b>	\$1,652.5	\$1,434.5	\$1,607.1	\$172.6
<b>2016</b>	\$1,737.6	\$1,508.5	\$1,689.5	\$181.0
<b>2017</b>	\$1,832.6	\$1,592.5	\$1,776.2	\$183.7
<b>2018</b>	\$1,936.6	\$1,680.7	\$1,874.6	\$193.9
<sup>1/</sup> Column (4) – Column (3).				

### **III-B Stand-Alone Railroad System**

### **III. B STAND-ALONE RAILROAD SYSTEM**

CSXT has generally accepted the SFRR system route and main-track configuration as described by SECI in its Opening Evidence. The principal areas of disagreement are whether the SFRR must construct the NS-owned MGA lines and bear half their construction cost; the number of SFRR interchange locations and yards needed to serve its traffic group; and the track miles for several track categories.

#### **1. Route and Mileage**

SECI and CSXT agree on the SFRR's route, which resembles a wishbone with the main stem extending north from Bostwick, FL to Folkston, GA, a western leg extending northwest from Folkston to Princeton (North Gibson), IN, and an eastern leg extending northeast from Folkston to McKeesport (Demmler), PA and thence southwest to Brownsville, PA and Haywood/Lumberport, WV. *See* CSXT Reply at III-B-1. Excluding the construction issue pertaining to the MGA lines, the parties differ as to the SFRR's route mileage by a grand total of only 0.69 miles.<sup>1</sup> SECI accepts the addition of 0.60 miles of CSXT (and thus SFRR) ownership of the Haywood Industrial Track on the Robinson Run Branch, and rejects CSXT's other route-mile changes. Thus the SFRR's constructed route miles, properly calculated, equal 2,093.00.

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<sup>1</sup> As described below, CSXT's Reply Exhibit III-B-2 and supporting workpapers show 1.07 fewer main line route miles and 1.76 more branch line miles, for a net difference of 0.69 route miles.

**a. Main Line**

CSXT's position on the SFRR's main-line route miles is somewhat confusing, as Table III-B-1 in its Reply Narrative is inconsistent with its exhibits and workpapers. Table III-B-1 shows the SFRR's main-line route miles as being exactly the same according to both parties (leaving aside for the moment the issues pertaining to the MGA lines). However, CSXT's track diagrams for the SFRR, shown in its Reply Exhibit III-B-2, show slight differences in route mileages for a number of main-line segments, with some increases and some decreases in segment length. The net result is a decrease in main-line route miles of 1.07 miles compared with SECI's Opening calculation.

SECI's calculation of main-line route miles was based on a careful review of CSXT's operating timetables and track charts produced in discovery. CSXT has provided no explanation of why its calculations of route mileages for some line segments differ from SECI's calculations, and CSXT's numbers are hard-coded into its e-workpaper "CSXT Reply Track and Facilities Summary.xlsx" with no supporting documentation. Moreover, CSXT did not include any of its segment mileage adjustments in calculating the SFRR's roadbed preparation costs.<sup>2</sup> Given these facts, there is no reason for the Board to accept CSXT's mileage calculations over SECI's.

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<sup>2</sup> See CSXT Reply e-workpaper "CSX Modified SFRR Grading.xls," tabs "IIF Miles" (which shows mileage figures identical to those posited by SECI on Opening,) and "IIF\_7 CY Grad" (in which CSXT shaded the miles in green meaning SECI's miles were accepted).

**b. Branch Lines**

According to CSXT Reply Exhibit III-B-2 and CSXT's workpapers, CSXT includes 1.76 more branch line miles than SECI, disregarding the MGA lines. As part of this difference, CSXT asserts that SECI neglected to include 0.60 miles of the Haywood Industrial Track, which allegedly are owned by CSXT, in the route miles for the Robinson Run Branch.<sup>3</sup> As noted above, SECI accepts the addition of 0.60 route miles for the Haywood Industrial Track, even though CSXT has provided no documentation to support its declaration that it owns 0.60 miles of that track. This increases the route miles for the Robinson Run Branch from 60.52 to 61.12 miles. SECI disagrees with the remaining branch-line route mile differences for the same reasons discussed above with respect to main-line route miles, *i.e.*, CSXT's mileage figures are hard-coded with no supporting documentation.

CSXT also includes the MGA lines, consisting of 135.12 route miles owned by NS, in the SFRR's constructed branch line route miles. The MGA lines are the lines of the former Monongahela Railway which NS acquired as part of the Conrail control transaction approved by the Board in Finance Docket No, 33388. These lines are used by both NS and CSXT (which has joint use rights) to serve

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<sup>3</sup> In Table III-B-1 on page III-B-6 of its Reply Narrative, CSXT shows the difference between SECI's and CSXT's calculation of route miles for the Robinson Run Branch as 0.69 miles (61.21 minus 60.52), which is the same as the parties' overall difference in route miles excluding the MGA lines. SECI assumes the correct number is 0.60 miles as that number is used in CSXT's narrative text, Reply Exhibit III-B-2 and workpapers.

the Bailey, Federal 2, Loveridge and other coal mines in southwestern Pennsylvania and northwestern West Virginia. SECI disagrees that the MGA lines should be included in the SFRR's constructed route miles.<sup>4</sup>

CSXT asserts that inclusion of the MGA lines in the SFRR's constructed route miles, with the SFRR bearing half of the cost of constructing them and NS apparently bearing the other half, is consistent with the Monongahela Usage Agreement between CSXT and NS and the related Monongahela Operating Plan (collectively the "MGA Agreement"). However, the MGA Agreement does not support CSXT's position, and that position otherwise is inconsistent with SAC theory and precedent.

The MGA lines were acquired (and are now owned) by NS as part of the Board-approved Conrail control transaction, in which Conrail's lines were divided between CSXT and NS. As part of the Conrail control transaction, CSXT was given joint use rights on the MGA lines, which rights were implemented by the MGA Agreement. As described by CSXT in the footnote on page III-B-4 of its Reply Narrative, NS generally operates CSXT coal trains between the mines served by the MGA lines and CSXT's Newell Yard, using NS crews. Under the MGA Agreement, as CSXT notes, "CSXT reimburses NS in the form of a

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<sup>4</sup> However, SECI has included the route miles for the MGA lines in the SFRR's operating miles for purposes of calculating locomotive unit miles and car miles for trains that originate coal at mines served by the MGA lines, and for purposes of calculating revenue divisions for cross-over traffic under the Board's ATC methodology. *See* SECI Opening at III-B-7.

trackage rights fee for operating expenses and pays NS a 50% share of annual capital expenditures.” *Id.*

CSXT expands the provision of the MGA Agreement requiring CSXT to pay NS a 50% share of annual capital expenditures on the MGA lines into a requirement that the SFRR pay half of the cost of constructing those lines.<sup>5</sup> However, nothing in the MGA Agreement requires CSXT to compensate NS for any portion of its cost of acquiring (much less constructing) the MGA lines. Rather, the MGA Agreement applies only to capital improvements to those lines going forward – that is, capital improvements made during the period of NS ownership and CSXT joint use.<sup>6</sup>

CSXT asserts that “by failing to construct the facilities serving the portions of the MGA included in the SARR configuration, SECI has failed to account for the road ownership costs associated with CSXT’s equal access to MGA under the MGA Operating Agreement, costs which the SFRR would also incur to obtain equal access to those facilities.” CSXT Reply at III-B-21. However, the MGA Agreement says nothing about CSXT incurring or sharing

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<sup>5</sup> “In its opening, SECI includes only the trackage rights portion of the compensation, thereby creating a road ownership and capital maintenance [sic] cost void” (fn. 3 on page III-B-4 of CSXT’s Reply Narrative).

<sup>6</sup> See Section 11 of the Monongahela Usage Agreement, which applies {

} A copy of this section is set forth in CSXT Reply e-workpaper “MGA Agreement.pdf.” pages with Bates Nos. CSX-SE-HC-013390-013393.

road ownership costs associated with its equal access to the MGA lines. Rather, the agreement defines the methods and standards for the provision of rail service on those lines by both NS and CSXT and provides for the sharing of operating costs and capital improvements. CSXT has cited nothing in the MGA Agreement that supports its bald assertion that the SFRR must pay for road ownership costs associated with its joint right to use the MGA lines.

There is no support for CSXT's contention in either the Board's decision approving the Conrail control transaction<sup>7</sup> or the Transaction Agreement between CSXT and its affiliates and NS and its affiliates, pursuant to which the two carriers implemented their acquisition of control of Conrail and the division of ownership of its lines between them. Neither the Board's decision nor the Transaction Agreement requires one party to pay any part of the other party's cost of acquiring Conrail lines regardless of whether the first party has joint use or operating rights over such lines.

Nor is there any support for requiring the SFRR to pay for half the cost of constructing the MGA lines in the manner in which the SFRR provides transportation service to its customers whose coal originates at mines served by these lines. The SFRR replicates CSXT service by having NS operate its trains over these lines between its Newell Yard (near Brownsville, PA) and the mines, with NS crews. The SFRR compensates NS for operating its trains in the manner described in the footnote on page III-B-4 of CSXT's Reply Narrative, and it also

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<sup>7</sup> STB Finance Docket No. 33388, Decision No. 89 served July 23, 1998.



pays NS a 50 percent share of capital improvements made by NS for the benefit of itself and CSXT during and subsequent to the SFRR's construction period.<sup>8</sup> In short, the SFRR complies with all of CSXT's obligations under the MGA Agreement and predecessor documents implementing the Conrail control transaction.

Finally, this type of arrangement, where the SARR utilizes the incumbent's operating rights over the lines of a non-defendant, third party carrier by stepping into the incumbent's shoes under the terms of its agreement with the third-party carrier, has been approved by the Board in prior SAC rate cases without requiring the SARR to incur the cost of constructing the lines involved. *See Wisconsin P&L* at 1006, 1014; *PSCo/Xcel* at 628, 665, *AEPCO I* at 228 ("Incorporating into a SAC analysis cost-sharing or cost-saving arrangements with third parties is fully consistent with the SAC principle that a SARR should not incur costs that the defendant carrier does not incur").<sup>9</sup>

**c. Interchange Points**

SECI's Opening traffic group required the SFRR to interchange traffic with a total of 21 rail carriers (including CSXT) at 51 locations, as shown in

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<sup>8</sup> See Rebuttal e-workpaper "SFRR Capital Expenditures on MGA.xls."

<sup>9</sup> In a subsequent decision in the *AEPCO* case served March 15, 2005 ("*AEPCO II*"), the Board refused to allow a SARR, when replacing one of two defendant carriers involved in a joint movement, to utilize that carrier's operating rights over lines of the other defendant rather than constructing those lines. However, the Board explicitly acknowledged the propriety of a SARR's using operating rights over a non-defendant third party carrier, referring to its *AEPCO I* decision. *See AEPCO II* at 7.

Opening Exhibit III-B-2. On Reply, CSXT asserts that under the new operating plan it developed “to serve properly the traffic moving over the SFRR,” SECI has understated both the number of interchange locations and the number of connecting carriers involved. CSXT Reply at III-B-4-5. As shown in CSXT Reply Exhibit III-B-3, CSXT proposes to add seven new interchange locations, and add interchanges with one or more additional railroads at 11 of SECI’s Opening interchange locations.

After reviewing CSXT’s evidence and the traffic data produced in discovery, SECI concurs that it omitted some interchanges in its opening evidence. In particular, additional connecting carriers should be added at 12 existing SFRR interchange locations, and new interchanges should be added at five locations. The accepted additional locations and carriers involved are shown in SECI Rebuttal Exhibit III-B-1.

SECI disagrees with CSXT that the SFRR interchanges traffic with two of the carriers added by CSXT at the existing SFRR interchanges identified in SECI’s Opening Exhibit III-B-2, namely CSXT at Atkinson (Madisonville), KY and CSXT at Doswell, VA. The only carrier the SFRR interchanges traffic with at Madisonville is the Paducah & Louisville (“PAL”). All other movements for which Madisonville is the on-SARR or off-SARR station originate or terminate at Madisonville. Both parties treated these movements this way in their ATC

calculations. Thus the SFRR does not need an interchange with CSXT at Madisonville.<sup>10</sup>

At Doswell, VA, the SFRR interchanges traffic only with the Buckingham Branch Railroad (“BB”). The current CSXT system map shows the former CSXT rail line from Doswell to Gordonsville, VA as the BB and it is labeled as a regional railroad with no CSXT trackage rights. The BB moves some empty overhead CSXT coal trains west over this line, but any traffic originating or terminating on the line is handled by the BB. Thus no interchange with CSXT is necessary. (Since SECI has provided facilities at Doswell to interchange traffic with the BB, and CSXT would use the same connection if it had trackage rights over the BB, no additional SFRR interchange facilities would be needed at Doswell in any event.)

SECI accepts five of the seven new SFRR interchange locations proposed by CSXT – Cordele, GA (Heart of Georgia RR), Vine Hill, TN (Nashville & Eastern RR), Hopewell, VA (NS), North Charleston, SC (Port Terminal RR of SC), and Wilson, NC (Carolina Central RY and NS). SECI disagrees that interchanges need to be added at Lumberport, WV or Waterford, AL.

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<sup>10</sup> According to the “CSXT” version of Reply Exhibit III-B-2, the SECI would interchange traffic with both CSXT and PAL at a new interchange located at MP 276.40 at Madisonville. However, CSXT did not remove the interchange with PAL at MP 273.30 that SECI provided on Opening (*id.*). CSXT has not explained why there should be two separate interchanges with PAL at Madisonville. One interchange is sufficient, and it is located at MP 273.0.

With respect to Lumberport, this is the same location as Haywood, WV, where the SFRR already interchanges traffic with CSXT. Lumberport/Haywood are shown as one and the same location on both SECI's and CSXT's track diagrams for the SFRR. *See* both versions of page 36 of CSXT Reply Exhibit III-B-2; *see also* the relevant CSXT track chart (SECI Opening e-workpaper "CSXT Track Charts.pdf" at p. 380, Bates No. 10746).

With respect to Waterford, this station is located more than 200 miles west of Waycross, GA, which is the closest point to Waterford on any SFRR route. CSXT's addition of Waterford as a SFRR interchange location is thus an obvious error.

## **2. Track Miles and Weight of Track**

A comparison of SECI's and CSXT's calculation of the SFRR's constructed track miles is shown in CSXT's Reply Table III-B-2. Essentially, CSXT agrees with SECI's main-line track configuration, rail weights and track miles (except for the route-mile differences described in the preceding section). However, CSXT proposes additional track miles for interchange, helper pocket and setout, yard, and "customer access" tracks. Each category is discussed in turn below.

### **a. Main Lines**

The only difference between the parties' respective calculations of constructed track miles for the SFRR's main lines involves CSXT's inclusion of 0.69 additional route miles (first main track), as described in

Part III-B-1-a above, and 135.12 route miles for the MGA lines, as described in Part III-B-1-b above. As indicated in those sections, SECI accepts the addition of 0.60 miles representing the CSXT-owned portion of the Haywood Industrial Track on the Robinson Run Branch, but rejects the addition of any route miles for the MGA lines.

CSXT has accepted SECI's Opening configuration, and calculation of track miles, for other (second) main track except for the MGA lines.<sup>11</sup> CSXT proposes to add 22.16 miles of existing second main track (passing sidings) on the MGA lines. However, since the SFRR does not need to construct the MGA lines in the first place, it also does not need to construct the additional 22.16 miles of second main track on those lines.

**b. Branch Lines.**

As discussed above, SECI accepts CSXT's addition of 0.60 track miles for the Haywood Industrial Track on the Robinson Run Branch in West Virginia.

**c. Interchange Tracks**

Interchange tracks. Interchange tracks are located at the points described in SECI's Rebuttal Exhibit III-B-1. As indicated earlier, SECI has accepted some of the additional interchanges posited by CSXT in its Reply

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<sup>11</sup> In reviewing CSXT's comparison of the parties' track miles, SECI determined that the number of other main track miles shown in Table III-B-2 of its Opening Narrative is incorrect. SECI actually included 712.49 miles of other main track, as shown in SECI Opening e-workpaper "Seminole Florida Railroad Route Miles Grading.xls," tab "Sticks."

Evidence, and has rejected others. With respect to the accepted additional interchanges, SECI disagrees with CSXT as to the additional track miles that are needed. Before discussing that issue, however, an error in SECI's Opening summary of the SFRR's interchange track miles requires correction.

SECI designed the SFRR's interchange tracks so that each track could accommodate the longest train that uses it. If the volume of interchange traffic at a particular location warranted more than one track, SECI provided the appropriate number of tracks, with each track able to accommodate one train at a time. The interchange track length needed to accommodate a train varies from 1.69 to 2.0 miles, depending on the location.

In reviewing CSXT's comparison of the parties' track miles for interchange tracks (*see* CSXT Reply at III-B-8, Table III-B-2, and CSXT Reply Exhibit III-B-2), SECI determined that the number of interchange track miles shown in Table III-B-2 of its Opening Narrative is incorrect. The track miles shown reflect the length of one interchange track at each location, whereas 25 of the interchanges consist of more than one track. The track miles for these multiple-track interchange locations should have totaled 127.18, as shown in SECI's Opening Exhibit III-F-8.<sup>12</sup> An additional 22 interchanges have one interchange track, 20 with tracks 1.69 miles in length and two with tracks 2.0

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<sup>12</sup> This total should have been 138.25 track miles as the Cherry Run, WV interchange has three tracks 1.69 miles in length, not 2.0 miles in length. Also, the interchange tracks at Cumberland and Alexandria Jct., MD, totaling 12.0 track miles, were inadvertently left out of Opening Exhibit III-F-8. These corrections have been made in SECI's rebuttal calculation of interchange track miles.

miles in length. These tracks account for an additional 37.80 track miles. Thus, the total track miles for interchange tracks should have been shown as 164.98. This has been corrected on Rebuttal to 176.05 miles to reflect the correction to the Cherry Run interchange track lengths and the inclusion of the Cumberland and Alexandria Jct. interchange tracks. This is the number of miles of interchange tracks for which construction costs were included in Part III-F of SECI's Opening Evidence.

Turning to the additional SFRR interchanges that SECI agrees should be added, SECI disagrees with CSXT's addition of track miles at existing SFRR interchange locations. CSXT has provided no evidence that adding one or more interchange partners at the existing interchange locations causes the track miles at these locations to increase – that is, CSXT has not indicated that the interchanges occur elsewhere than on the interchange tracks already provided by SECI on Opening.<sup>13</sup> Therefore, it is inappropriate to add additional interchange track miles at these locations.

There are also a number of instances where SECI placed one 1.69-mile interchange track at an existing SFRR interchange location, but CSXT increased the track miles to 3.38 miles or more without adding additional

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<sup>13</sup> In this regard, CSXT has not added any new interchange tracks for the additional SFRR interchange partners at existing interchange locations in its version of the SFRR track diagrams (Reply Exhibit III-B-2). The Reply e-workpaper that CSXT cites in support of its track-mile calculations ("CSXT Reply Track and facilities Summary.xlsx") simply shows total miles for interchange tracks, with no breakdown by location.

interchange tracks (or interchange partners). Examples include the interchange with the RJ Corman RR at Guthrie, KY shown on page 3 of Reply Exhibit III-B-2 (CSXT increased the interchange track length from 1.69 to 3.69 miles); the interchange with the SQVR at Bridgeport, TN shown on page 5 of Exhibit III-B-3 (CSXT increased the interchange track length from 1.69 to 3.38 miles); and the interchange with the GNRR at North Elizabeth, GA shown on page 7 of Exhibit III-B-3 (CSXT increased the interchange track length from 1.69 to 3.38 miles). CSXT provided no explanation of why it increased the track miles at locations where it agrees that only one interchange track is needed.

According to CSXT's Reply Exhibit III-C-3, CSXT has added seven new interchange locations that are not reflected in SECI's Opening evidence. Again CSXT's Reply Exhibit III-B-2 does not show any interchange tracks (or associated turnouts) at these locations.

SECI agrees that interchange tracks should be added at five of the seven new locations (Cordele, GA, Hopewell, VA, North Charleston, SC, Vine Hill, TN and Wilson, NC). SECI disagrees that additional turnouts or interchange tracks should be added for the interchanges with the South Central Florida Express ("SCFX") at Jacksonville, FL or CSXT at Doswell, VA. SCFX reaches Jacksonville via trackage rights over the FEC, and the SFRR already has an interchange connection with FEC at Jacksonville that it also uses to interchange traffic with SCFX. SECI questions whether the SFRR actually interchanges traffic with CSXT as opposed to the BB at Doswell, but in any event CSXT would



use the BB trackage and the SFRR already has an interchange connection with the BB.

CSXT has added 3.38 miles of interchange tracks at each of the seven new interchange locations, which represents the length of two interchange tracks. CSXT has not explained why a single interchange track, 1.69 miles in length, would not suffice at each location. One track is sufficient at each of the five new interchange locations accepted by SECI because the volume of interchange traffic does not exceed 12 cars per day at any location. *See* Rebuttal Exhibit III-B-1. The total track miles for the interchange tracks at these five new locations is 8.45 miles.

In addition, as described in Part III-C-2-b, on Rebuttal SECI has added a second connecting track at four locations (Amqui, TN, Jacksonville, FL, Rocky Mount, NC, and Alexandria Jct., MD) to make the SFRR's track diagrams consistent with the track at these locations in the RTC Model. This adds an additional 1.20 miles to the SFRR's interchange track miles (0.3 miles for each of the four connecting tracks).

In summary, SECI agrees that 8.45 miles should be added to its Opening interchange track miles for five new interchange locations (Cordele, Hopewell, North Charleston, Vine Hill, and Wilson), and 1.20 miles should be added for additional trackage at the four existing interchange locations described in the preceding paragraph. These changes add a total of 9.65 track miles to the

corrected 175.05 miles of interchange tracks provided on Opening, for a total of 185.70 interchange track miles.<sup>14</sup>

**d. Helper Pocket and Setout Tracks**

The parties differ by 0.60 track miles for helper pocket and setout tracks. As best SECI can determine from reviewing CSXT's evidence (in particular Reply Exhibit III-B-2), CSXT accepted all of SECI's Failed-equipment Detector ("FED") and setout track locations and lengths.<sup>15</sup> The difference appears to be accounted for by CSXT's addition of two helper districts, apparently with helper pocket tracks. *See* CSXT Reply at III-B-10 and III-C-80-81.<sup>16</sup>

SECI's operating plan for the SFRR includes two helper districts, located near Cowan, TN and Sand Patch, PA. On Reply, CSXT adds two helper districts, at Loveridge, WV and Brunswick, MD. It did so because SECI's RTC simulation assertedly included helper service at these additional locations. (*See* CSXT Reply at III-C-80 and III-C-88).

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<sup>14</sup> *See* SECI Rebuttal e-workpapers "SFRR Grading Rebuttal.xls, tab "IIIF\_8 Yards" for multi-track interchange locations and "Seminole Florida Railroad Route Miles Grading Rebuttal.xls," tab "Sticks" for single-track interchanges.

<sup>15</sup> In reviewing CSXT's comparison of the parties' track miles, SECI determined that the number of helper pocket and setout track miles shown in Table III-B-2 of its Opening Narrative is incorrect. SECI actually included 22.39 miles of helper pocket and setout tracks; *see* SECI Opening e-workpaper "Seminole Florida Railroad Route Miles Grading.xls," tab "Sticks."

<sup>16</sup> The relevant workpaper referenced by CSXT, Reply e-workpaper "CSXT Track and Facilities Summary.xlsx," is of little assistance here as it simply reflects the total track miles for helper pocket and setout tracks, with no explanation of where 0.60 miles have been added to SECI's track miles for this category.

SECI's operating plan does *not* provide helper districts at Loveridge and Brunswick. Rather, it provides for one additional road locomotive to be added to certain loaded coal in these areas – trains operating north and south from Rivesville, WV and trains operating between Cumberland and Alexandria Jct., MD. *See* SECI Opening at III-C-27. The road crews on the affected trains pick up and set out the additional locomotives at the appropriate locations (which are crew-change points in the case of Cumberland and Alexandria Jct.) so there is no need for separate helper districts, helper crews or helper setout tracks. Indeed, CSXT's track diagrams (Reply Exhibit III-C-2) do not show any helper pocket tracks in the areas where it proposes to add the two new helper districts.

Given the lack of any supporting documentation for the addition of 0.60 miles to SECI's Opening calculation of track miles for helper pocket and setout tracks, the Board should accept SECI's track miles for these tracks.

**e. Yards and Yard Tracks**

On Opening, SECI equipped the SFRR with four yards (in addition to the small, three-track interchange yards provided at several interchange points). They are located at Nashville, TN; Folkston, GA; Petersburg (Collier), VA; and Newell, PA.<sup>17</sup> These yards are used primarily for 1,000/1,500-mile car inspections and fueling/servicing of locomotives.

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<sup>17</sup> In reviewing CSXT's comparison of the parties' track miles, SECI has also determined that the number of yard track miles shown in Table III-B-2 of its Opening Narrative is incorrect. SECI actually included a total of 41.44 miles of yard track in these four yards, as shown in Opening Exhibit III-F-8.

CSXT accepts these four yards, but proposes to relocate the Folkston yard to Callahan, FL, and to enlarge all of the yards except Newell (which is used only by coal trains) to accommodate additional switching activity for non-coal traffic. CSXT also proposes to add a total of 16 additional yards, two of which are small coal yards and 14 of which are regional and local yards to handle the SFRR's merchandise and intermodal traffic (including two small yards dedicated to handling "Transflo" traffic). *See* CSXT Reply at III-B-11-20 and Table III-B-3.

Most of the additional yards proposed by CSXT derive from its new operating plan for the SFRR, which involves the creation of new trains with new blocking schemes that are unrelated to the real-world trains the SFRR interchanges with CSXT. As discussed in Part III-C-1, CSXT cannot propose such an entirely new operating plan on Reply, and its operating plan therefore must be disregarded by the Board. This means the new and enlarged yards assertedly needed to handle the new merchandise traffic flows derived from CSXT's operating plan must also be disregarded. For the same reason, there is no need for the Board to consider relocating the SFRR's Folkston Yard to Callahan. CSXT proposed that relocation only because of the new switching of merchandise traffic to be performed at Callahan under its new operating plan.

SECI also disagrees that the SFRR needs two additional staging yards for coal trains. However, it concurs with CSXT that yard facilities are needed to handle the intermodal and Transflo traffic that is originated and terminated by the SFRR. As described below, facilities should be provided to

originate/terminate this traffic at five locations for both intermodal and Transflo traffic, and four additional locations for Transflo traffic only.<sup>18</sup>

(i) **Additional Coal Yards**

CSXT proposes to add two new coal train staging yards, at Atkinson (Madisonville), KY and Grafton, WV, with Atkinson Yard also to be used for 1,500-mile inspections “as needed.” CSXT Reply at III-B-19. The proposed layout of the Atkinson Yard is shown on page 50 of CSXT Reply Exhibit III-B-2, and CSXT included 4.2 track miles for this yard (*see* Reply e-workpaper “CSXT Reply Track and Facilities Summary.xlsx,” tab “Yard Track Summary.” CSXT did not provide any information as to either the proposed layout of Grafton Yard or the track miles for this yard.

A separate yard is not needed at Atkinson/Madisonville (“Atkinson”). According to CSXT, Atkinson Yard is to be used to stage and inspect empty coal trains (presumably trains destined to Illinois Basin mines in Western Kentucky, Indiana and Illinois). However, the SFRR already has a yard at Nashville, TN, where empty coal trains destined to these mines from points south of Nashville are staged and inspected under SECI’s operating plan. *See*

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<sup>18</sup> As discussed later in this Rebuttal Narrative, SECI included an intermodal lift and ramp cost for each intermodal container and trailer that requires a lift while on the SFRR. This cost includes a capital element, so the addition (construction) of yard facilities to originate/terminate intermodal traffic is conservative in that it double-counts some capital costs. The same applies to the Transflo facilities to the extent that Transflo cars receive an intermediate switch or move on a local train; SECI’s I&I and yard/local switch cost additives also include a capital element.

SECI Opening at III-B-13-14 and III-C-34. Nashville Yard is only 115 miles from Atkinson, and CSXT has not explained why additional staging or inspections are needed at Atkinson.<sup>19</sup> Under SECI's operating plan, Atkinson is not a crew base for any train crews except crews operating between mines in the area (Dotiki and Cimarron) and TVA's nearby Paradise power plant. *Id.* at III-C-40. When the train moving between one of these mines and the Paradise plant requires a 1,500-mile inspection (approximately once every nine days), it is performed by the outbound train crew at Atkinson prior to departure (train crew members are cross-trained for this purpose). On Opening, SECI did not specify a location for these inspections to be performed. The location is the siding between Mileposts 274.00 and 275.70. According to SECI's RTC simulation, that siding is not used by any other trains during the peak period, so it can be used for occasional train inspections without interfering with the operation of any other trains.

With respect to Grafton Yard, SECI questions whether CSXT really intended to include this yard in the SFRR's configuration. The reference to Grafton Yard on page III-B-19 of the Reply Narrative appears to confuse this yard with Atkinson Yard. Grafton Yard is not listed as a SFRR yard in Table III-B-3 in CSXT's Reply Narrative, nor is this yard shown in CSXT Reply Exhibit III-B-2.

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<sup>19</sup> SECI's Opening and Rebuttal RTC simulations show that empty coal trains moving to Illinois Basin mines from the south do not require additional staging between Nashville and the mines to enable their crews to complete their runs within a single tour of duty.

Finally, no track miles for Grafton Yard are included in CSXT Reply e-workpaper “CSXT Reply Track and Facilities Summary.xlsx.”

Nor has CSXT provided any explanation of why the SFRR needs a staging yard for empty coal trains at Grafton. Most empty coal trains that move through Grafton also move through the SFRR’s Newell Yard, where they receive a 1,500-mile inspection and are staged. Crews for these trains operate in turnaround service from Newell, which is only 97 miles from Grafton. Grafton is a crew base for turnaround crews that operate to Consol 95 or Loveridge Mine or the CSXT interchange at Haywood, WV, and return.<sup>20</sup> To the extent these trains do not move via Newell, they are interchanged with CSXT at either Grafton or Haywood, and are inspected elsewhere by CSXT. SECI’s Rebuttal RTC simulation indicates there is no need to stage any of these trains at Grafton. Thus, there is no justification for adding a separate staging yard at Grafton.

(ii) **Yards for Intermodal and Transflo traffic**

The SFRR originates or terminates intermodal and/or Transflo traffic at the locations shown in Rebuttal Table III-B-1 below.

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<sup>20</sup> See SECI Opening at III-C-41 for a description of the SFRR crew assignments in this area.

<b>REBUTTAL TABLE III-B-1 SFRR INTERMODAL/TRANSFLO TERMINALS</b>		
<b>Location<sup>1/</sup></b>	<b>Intermodal</b>	<b>Transflo</b>
Atlanta, GA	Yes	Yes
Jacksonville, FL	Yes	Yes
Nashville, TN	Yes	Yes
Charleston, SC	Yes	Yes
Savannah, GA	Yes	Yes
Richmond, VA	No	Yes
Chattanooga, TN	No	Yes
Clarksburg, WV	No	Yes
Petersburg (Collier), VA	No	Yes
Dalton, GA	No	Yes
<sup>1/</sup> Table III-B-3 on p. III-B-21 of CSXT's Reply Narrative indicates that a yard for intermodal and Transflo traffic is also needed at Princeton, IN. However, the SFRR's traffic group does not include any intermodal or Transflo traffic that originates or terminates at Princeton (as opposed to being interchanged with CSXT at that location).		

The facilities needed to handle the intermodal traffic at each of the five locations shown in the table are tracks to hold trains for ramping/deramping containers or trailers, and parking/storage space for trucks (tractors) and chassis. Given the volume of intermodal traffic originated and terminated at these locations (less than two trains per day at each location other than Jacksonville, and less than four trains per day at Jacksonville<sup>21</sup>), two intermodal tracks are sufficient except at Jacksonville, where four tracks are needed. The intermodal (and Transflo) tracks at Nashville are located at the existing SFRR Nashville Yard, as shown on page 4 of SECI Rebuttal Exhibit III-B-2. The intermodal tracks at the other locations are added at approximately the same places where CSXT located them according to its

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<sup>21</sup> See SECI Rebuttal e-workpaper "Intermodal and Transflo Trains.xls."



Reply Exhibit III-B-2. A total of 19.26 track miles have been added to the SFRR's yard track miles for the intermodal ramp/deramp tracks at the five locations involved (as well as associated space for chassis storage and truck parking).

The Transflo traffic originated and terminated by the SFRR includes two bulk commodities, ethanol (STCC 28) and incinerator ash (STCC 40), that are transferred pneumatically from railcars to trucks or vice versa. Transflo tracks should be added at each of the ten locations where the SFRR originates or terminates this traffic, again at approximately the same places where CSXT added them in Reply Exhibit III-B-2. According to CSXT Reply e-workpaper "CSXT Reply Track and Facilities Summary.xlsx," tab "Yard Track Summary," CSXT added a total of 2.44 miles for Transflo tracks, excluding the Transflo tracks at Princeton which the SFRR does not need. SECI calculates that the Transflo tracks at each location equal 0.24 track miles, and thus adds a total of 2.40 ( $0.24 \times 10$ ) miles for Transflo tracks to its Rebuttal yard track miles, as well as the associated turnouts (two at each of the ten locations).

In summary, a total of 21.66 track miles for yards have been added on rebuttal (19.26 miles for the intermodal yard tracks plus 2.40 miles for the Transflo tracks). The revised total yard track miles equal 63.1. See Rebuttal e-workpaper "SFRR Grading Rebuttal.xls," tab "IIF\_8 Yards."

**f. Customer Access Tracks**

CSXT claims that SECI's track configuration for the SFRR "does not include spur tracks, industry tracks or switch connections at any customer locations." CSXT Reply at III-B-11. This is incorrect; a review of SECI's track diagrams (Opening Exhibit III-B-3) shows that turnouts were included at numerous local origin/destination points from or to which traffic moved during the 15-day RTC simulation period. This included 28 turnouts at origin/destination points for general freight traffic. While SECI agrees that turnouts and a small amount of SFRR-owned track to connect with private (industry) track are needed at each location where the SFRR originates or terminates general freight traffic in the peak year, it disagrees with CSXT's assertion that the SFRR needs turnouts and associated trackage at anything approaching the 884 locations proposed by CSXT.

In its Reply e-workpaper "CSXT Reply Track and Facilities Summary," tab "Customer Tracks," CSXT asserts that the SFRR delivers and picks up general freight (merchandise) traffic at a total of 884 locations. In the same workpaper CSXT calculates a total of 22.27 track miles for the SFRR-portion of the industry tracks at these locations. This calculation assumes an average of 250 track feet at each location, minus 117 feet for the turnout leaving 133 feet for the industry track itself.<sup>22</sup> SECI disagrees both with the 884 delivery

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<sup>22</sup> Multiplying this amount by 884 yields 117,572 track feet, or 22.27 track miles. This total is carried over to the "Summary" tab of the workpaper.

and pickup locations and with CSXT's "assumed" average of 250 track feet at each location.

With respect to the SFRR's local origins and destinations (delivery/pickup locations), CSXT assumed that each individual customer (at each location) for which the SFRR originates or terminates general freight traffic requires a separate turnout – thus ignoring the fact that several customers are often served from the same industrial lead at a particular location. SECI's experts have identified a total of 93 unique SFRR origins and destinations for the general freight traffic handled by the SFRR. *See* SECI Rebuttal e-workpaper "SFRR Industry and Spur Tracks.pdf" and related e-workpaper spreadsheets referenced therein.<sup>23</sup> Since CSXT has not provided any information showing that more than one turnout is needed at any of these locations, the Board should accept that a total of 93 mainline turnouts (and associated trackage) are required to enable the SFRR to serve its general freight customers.

These 93 locations include the ten Transflo terminals, discussed in the preceding section on the SFRR's yards, for which turnouts and associated trackage are being provided on Rebuttal. This reduces the remaining locations to 83. Mainline turnouts were provided for 28 of these locations on Opening, leaving a balance of 55 turnouts to be added at the non-Transflo locations. The

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<sup>23</sup> This workpaper contains a detailed critique of CSXT's calculation of 884 origin/destination locations, and explains why that number is overstated by 351 locations even using CSXT's assumption that each customer at a particular origin or destination point should be provided with its own turnout and access track.

cost of these additional turnouts has conservatively been included in SECI's Rebuttal construction costs.<sup>24</sup>

CSXT also assumes that the SFRR will own an average of 250 track feet of carrier-owned track at each general freight customer location (CSXT Reply at III-B-11). This is inconsistent with CSXT's own established standards for industry tracks. CSXT's Standard Guidelines and Specifications for the Design and Construction of Private Sidetracks states that "CSXT will normally construct, own and maintain the first 150 feet of track, including the turnout."<sup>25</sup> Thus, in the admitted absence of information of the precise length of the railroad-owned portions of the industry tracks in issue, CSXT should have used its own standard of 150 track feet rather than 250 feet. Deducting the turnout length (117 feet) from the 150-foot standard length for the railroad-owned portion of these tracks leaves an average of 33 track feet excluding the turnout.

Again, having the SFRR own and incur the cost of constructing this track is very conservative as CSXT usually requires its customer to bear the entire

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<sup>24</sup> In the experience of SECI's operating and engineering experts, the policy of most railroads is to require the customer to bear the entire cost of constructing mainline turnouts and associated trackage, as well as related signal work. SECI Witness Harvey Crouch has worked with CSXT's Industrial Development Department on several projects to provide rail service to new shipper facilities in Tennessee. In each case CSXT required the industry to pay the cost of installing the mainline turnout and all track to the facility. Thus SECI's approach of having the SFRR construct the mainline turnouts and some associated trackage to serve its local general freight customers is very conservative.

<sup>25</sup> See Rebuttal e-workpaper "CSX Guidelines for Private Sidetracks.pdf."

cost of constructing the turnout and trackage needed to serve their facility.

However, to be consistent with its intended approach on Opening, SECI is now providing for the SFRR to construct and own 33 feet of track at each of the 83 non-Transflo locations for which customer-access turnouts are provided. The total length of the SFRR-owned portion of the industry tracks at these locations is  $33 \times 83 \div 5,280 = 0.52$  track miles. This number should be accepted by the Board in lieu of the 22.27 track miles proposed by CSXT.

CSXT did not add any show turnouts for customer access tracks in its version of the SFRR's track diagrams (Reply Exhibit III-B-2), over and above those shown in SECI's version. Following CSXT's lead, and to avoid unnecessary expense, SECI is not including additional customer access tracks in its Rebuttal track diagrams (Rebuttal Exhibit III-B-2). The cost of constructing the turnouts and associated trackage, as described above, are included in SECI's revised road property investment costs (see Part III-F).

**g. Summary**

A summary of the parties' positions regarding the SFRR's track miles is set forth in Rebuttal Table III-B-2 below.

<b>REBUTTAL TABLE III-B-2</b> <b>SFRR CONSTRUCTED TRACK MILES</b>			
	<b>SECI Opening</b>	<b>CSXT Reply</b>	<b>SECI Rebuttal</b>
Main line track – Single first main track	2092.40	2,228.31 <sup>1/</sup>	2,093.00
– Other main track	750.13	772.29 <sup>2/</sup>	712.49
Total main line track	2,842.53	3,000.50	2,805.49
Interchange tracks	75.62	186.44	185.70
Helper pocket and setout tracks	13.03	13.63	22.39
Yard tracks (excl. interchange yards)	105.86 <sup>1/</sup>	339.38	63.10
Customer Access tracks (excl. Transflo)	0.00	22.27	0.52
<b>Total track miles</b>	<b>3,037.04</b>	<b>3,562.22</b>	<b>3,077.20</b>
<sup>1/</sup> This number inadvertently included multi-track interchange yard facilities.			

The remaining difference between the parties is 404.48 track miles, most of which is accounted for by the additional yards CSXT proposes for switching of general freight traffic.

### 3. Other

#### a. Joint Facilities

CSXT concurs that the SFRR has operating rights over two joint facilities owned by NS. These include the MGA lines in Pennsylvania/West Virginia and the small segment of NS trackage at Petersburg, VA used by the SFRR to reach a customer's private trackage.

With respect to the MGA lines, CSXT asserts that the SFRR must construct these lines and bear 50 percent of the construction cost, with NS (the lines' actual owner) bearing the other 50 percent. CSXT does not explain why the

SFRR should be required to incur substantial capital costs to access these lines, when the incumbent carrier (CSXT) did not incur such costs and instead has operating or joint use rights over these lines that the SFRR (which replaces the incumbent) can use.

As discussed in Part III-B-1-b above, nothing in the operative agreements between CSXT and NS governing CSXT's access to the MGA mines and operations on the MGA lines, and nothing in the Board's decisions in the Conrail Control proceeding (Finance Docket No. 33388) approving the acquisition of these lines by NS subject to CSXT's joint use rights, required CSXT to bear any portion of the acquisition cost of these lines. NS is a third-party rail carrier, not a co-defendant with CSXT in this case, and in such a situation Board precedent authorizes the SFRR to step into CSXT's shoes under its joint facility agreement with NS for purposes of moving coal traffic from the mines served by the MGA lines without bearing any portion of the cost of constructing those lines. *See Wisconsin P&L* at 1014; *AEPCO I* at 228; *AEPCO II* at 7.

**b. Signal/Communications System**

CSXT has accepted the parameters of SECI's proposed signal and communications system for the SFRR. *See* CSXT Reply at III-B-22 and III-F-82-83. CSXT disputes some of the component quantities and costs advanced by SECI on Opening. SECI responds to CSXT's evidence on these issues in Part III-F-6 of this Rebuttal.

**c. Turnouts, FEDs and AEI Scanners**

At page III-B-23 of its Reply Narrative, CSXT repeats SECI's specification of turnouts (including turnout sizes for connections between various types of tracks), failed-equipment detectors, and AEI scanners by location, all without disputation. Quantity issues are discussed in Part III-F-6 below.

**d. RTC Model Simulation of SFRR Configuration**

CSXT begins its discussion of SECI's simulation of the SFRR's operations using the RTC Model at page III-B-24 of its Reply Narrative, describing several alleged track and other input errors. However, rather than correcting these asserted errors and re-running the RTC Model simulation presented by SECI on Opening, CSXT improperly developed an entirely new operating plan for the SFRR and conducted a new RTC simulation based on that operating plan.

SECI presented its RTC Model simulation in Part III-C of its Opening Evidence, and most of CSXT's discussion of RTC issues (including the presentation of its new operating plan and related new RTC simulation) is contained in Part III-C of its Reply evidence. Consistent with the approach it used on Opening, SECI responds to all of CSXT's RTC evidence in Part III-C of its Rebuttal.



### III-C Operating Plan

### **III. C. STAND-ALONE RAILROAD OPERATING PLAN**

This section of SECI's Rebuttal Evidence responds to CSXT's Reply evidence on the SFRR's operating plan. This section also includes a discussion of CSXT's Reply Evidence related to the RTC Model simulation of the SFRR's operations conducted by SECI, as well as the "MultiRail" model used by CSXT to create an entirely new (and unworkable) operating plan for the SFRR.

CSXT devotes more than half of its Part III-C Reply Narrative to a critique of the alleged shortcomings of SECI's operating plan with respect to non-coal (principally merchandise) traffic and its simulation of the SFRR's peak-period operations using the RTC Model. The second part of CSXT's Narrative presents an entirely new operating plan that CSXT developed, from scratch, to handle the SFRR's traffic in a manner that supposedly corrects the shortcomings of SECI's operating plan and provides for "full-service" handling of all cars moving on SFRR merchandise and intermodal trains (both cars containing SFRR traffic and cars containing other, non-SFRR traffic).

When CSXT's veil of rhetoric is stripped away, its position can be summarized succinctly: SECI's operating plan does not account properly for intermediate pickups and setouts, or yard/local switching, needed to move all of the cars on the SFRR's merchandise and intermodal trains between their SFRR origins and SFRR destinations. In fact, however, SECI *has* accounted for all of these activities. Its operating plan provides for pickup or delivery of cars at all local origins and destinations, and it accounts for intermediate and other yard

switching by applying an I&I switching cost or a yard/local switching cost every time one of these activities could be identified from the car event and CSXT shipment data produced by CSXT in discovery. (SECI also included an intermodal lift and ramp cost to reflect the cost of adding/removing trailers and containers at local origins and destinations for the SFRR's intermodal trains.) The only thing SECI did not do is include the *time* for these activities in its RTC Model simulation. As explained in more detail below, SECI could not model these activities on Opening because of unresolved problems with CSXT's electronic data and time constraints once its traffic group was finalized.

The question, then, is whether the switching costs applied by SECI, whenever an intermediate or yard/local switching activity could be identified to have occurred with respect to the trains handling the SFRR's traffic, properly reflect the time and related costs for these activities. As shown in Part III-C-1-d below, in direct response to CSXT's Reply allegations, SECI tested SFRR intermediate and local switching activities at several locations using the RTC Model and train movement data<sup>1</sup> SECI was finally able to use after CSXT provided additional descriptions in its Reply evidence. The test was performed to determine the time (and thus the actual cost) required to perform the intermediate/local switching activity that was not included in SECI's Opening

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<sup>1</sup> CSXT refers to this data as "electronic dispatcher reports." For purposes of this Rebuttal discussion, SECI refers to this data as "train movement data."

RTC simulation. The results confirm that the costs included for these activities on Opening are not only reasonable, but conservatively high.

Rather than presenting affirmative evidence accounting for the cost of the switching services performed by the SFRR, CSXT instead chose to develop an entirely new operating plan. CSXT's operating plan involves the creation of new SFRR merchandise (and, to some extent, intermodal) trains, assembled from blocks of cars removed from various CSXT trains at interchange points where the traffic first touched the SFRR system. CSXT's operating plan must be rejected by the Board because there is no time link between the real-world trains that move SFRR traffic to the on-SARR points and the new SFRR trains CSXT created to move traffic from the on-SARR points to local destinations or off-SARR interchange points. This means CSXT has not demonstrated that its operating plan is capable of providing the service required by the SFRR's customers, which is an essential factor for Board approval of a SARR operating plan. *Duke/NS* at 99. Moreover, CSXT only recently (on March 17, 2010) provided to SECI (and, as far as SECI is aware, has not provided to the Board) the "MultiRail" computer model used to develop the new, hypothetical car blocking schemes on which CSXT's operating plan is based.<sup>2</sup>

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<sup>2</sup> The MultiRail program is discussed in more detail below. The limited review of CSXT's use of the MultiRail program that SECI has been able to conduct confirms that CSXT has developed a non-functional and extremely costly operating plan that does not in any way reflect the flow of the SFRR's traffic in the real world, much less the flow of cross-over traffic between CSXT and the SFRR and vice versa.

In the following sections of this Part III-C, SECI explains in more detail why its operating plan is feasible and supported by the best evidence available, and why CSXT's operating plan must be rejected. SECI also responds to CSXT's criticisms of its inputs to the RTC Model, corrects those inputs where warranted, and presents the results of a supplemental RTC Model simulation of the SFRR's peak-period operations.

**1. General Parameters**

**a. Requirements for a Valid SARR Operating Plan**

A SARR must be able to meet the transportation needs of the traffic it is designed to serve, and thus a SARR operating plan must be capable of providing the service required by its customers. *Duke/NS* at 99, 117. As the Board held in a subsequent decision in the same case (Docket No. 42069 *et al*, STB served October 20, 2004) ("*Duke/NS II*"), "[i]t is well established that a SARR proponent may not assume a changed level of service to suit its proposed configuration and operating plan, unless it can demonstrate that the affected shippers, connecting carriers and receivers would have no cause to object." *Id.* at 11 (and cases cited therein).

In *Duke/NS*, the Board rejected the complainant's SARR operating plan because the service provided thereunder was different from the service NS provided in handling the same traffic. The Board went on to accept the defendant's alternative operating plan because it would provide the same service to all of the affected shippers that they received from NS. *Duke/NS* at 117-121. The situation

presented here is the reverse of that presented in *Duke/NS*. SECI's operating plan does not change the level of service provided to the SFRR's non-coal customers. CSXT's operating plan does.<sup>3</sup>

**b. SECI's Operating Plan Meets the Transportation Service Requirements of the SFRR's Traffic Group**

The SFRR's traffic group contains coal and other bulk traffic moving primarily in trainload quantities; intermodal traffic (also moving primarily in trainload quantities); and general merchandise traffic that for the most part does not move in trainload quantities, most of which is cross-over traffic that is interlined with the CSXT at points that are not presently interchange points (and where CSXT does not have yard facilities). The selected merchandise traffic moves in trains that also contain cars with other, non-SFRR traffic. To meet customer service requirements (usually measured by transit times), the SFRR must move the cars containing its traffic promptly after receipt from CSXT because the real-world CSXT trains moved promptly (in most cases without stopping at the interchange point).

Crafting a SARR operating plan for coal and other bulk traffic is usually straightforward, as it moves primarily in trainload quantities in a relatively small number of discrete flows. Crafting an operating plan for non-bulk traffic consisting primarily of cross-over traffic that does not move in complete trainloads

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<sup>3</sup> As the foregoing discussion indicates, most of CSXT's operating plan evidence relates to non-coal traffic. CSXT presents very little substantive criticism of SECI's operating plan insofar as it relates to coal traffic.

is more difficult. A SARR has two choices in this kind of situation. It can either remove the non-SARR cars from the train and give them back to the incumbent at the interchange point for placement and movement in other trains and then operate a train with the remaining cars, or it can move the entire train intact, as received from the incumbent, on its lines. The first option is problematic because it would force the incumbent to handle the cars in a different manner than it does in the real world – and in some instances construct additional facilities at the interchange location – thus incurring costs to move the non-SARR cars that the incumbent does not incur in the real world. Indeed, SECI is confident that had it chosen this option and separated the SFRR cars from non-SFRR cars when a train arrived at the on-SARR point, CSXT would have strenuously objected, and demanded that the SFRR be required to reimburse it for all costs resulting from breaking up the train and assembling a new train at that point. Accordingly, SECI chose the second option and provided for the SFRR to move the train intact from the on-SARR point as received from CSXT, without requiring CSXT to do anything other than hand off the train.<sup>4</sup>

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<sup>4</sup> CSXT's operating plan effectively chooses a variant of the first option described above. It assumes the SFRR accepts CSXT's actual trains, including both SFRR and non-SFRR cars, then requires the SFRR to break apart each train into individual cars, re-block all of the cars into new trains and move the newly created trains to destination or interchange. In doing so, CSXT has burdened the SFRR with 13 unnecessary yards, several hundred unnecessary yard train and enginemen and dozens of yard locomotives to perform totally unneeded, hypothetical blocking and switching functions for trains which are merely being received or forwarded between the SFRR and CSXT in interchange.

In crafting the SFRR's operating plan to handle merchandise traffic, SECI recognized that not all cars on the train move to the same point, that pickups and setoffs of cars occur at intermediate points, and that local and yard switching must be provided to get cars to their local destination points (or from their local origin points). However, SECI was unable to identify all of the operations involved in moving blocks of cars with both SFRR and non-SFRR traffic, or to include them in its RTC Model simulation, due to problems with the underlying CSXT car event and train movement data and SECI's inability to obtain timely information from CSXT needed to interpret and use that data for purposes of preparing the SFRR's operating plan.

**i. CSXT Data Problems Prevented SECI  
From Including Switching Operations in  
the SFRR's Operating Plan**

CSXT asserts that in response to SECI's discovery requests, it provided all the information needed by SECI to ascertain how each car containing merchandise traffic in the SFRR's traffic group moved, including the specific train(s) the car moved in and where and when intermediate or yard switching activity occurred. CSXT included a 28-page exhibit with its Reply Evidence, Reply Exhibit I-2, purporting to demonstrate this. The fact that it took CSXT 28 pages to explain how SECI could have used its databases to develop an operating plan based on actual car events and train movements is telling in and of itself – as is the fact that CSXT itself did not use these databases to determine actual



movements of the cars and trains carrying SFRR traffic,<sup>5</sup> but rather developed completely new and hypothetical blocks of cars and trains to move that traffic. In any event, it was not until CSXT filed and served its Reply Evidence that SECI finally obtained certain of the necessary decoders and learned how CSXT queried certain data sets to develop the information needed to determine the actual, detailed movement of the trains containing SFRR traffic.

SECI describes the continuing CSXT data problems, and explains in detail the specific problems encountered by SECI's experts when attempting to use the CSXT-produced electronic data to develop SECI's traffic group and operating plan, in Rebuttal Exhibit I-1 submitted herewith. To summarize briefly, the two primary CSXT electronic data sets that SECI's experts utilized to develop the SFRR's operating plan were the car event data and the train movement data.<sup>6</sup> Each of these electronic data sets presented specific data problems that hindered the development of the operating plan.

With respect to the electronic car event data set, in addition to delays in its production by CSXT, its primary deficiency was the small number of "events" that were provided for individual "movements." In addition, many of the locations included in the electronic data (often originating and terminating points)

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<sup>5</sup> CSXT did proffer a few examples of how to utilize the data to evaluate individual car or train movements but did not demonstrate how to efficiently evaluate the universe of SFRR cars or whether it is even possible in the time available to prepare opening evidence in a SAC rate case.

<sup>6</sup> SECI also utilized the CSXT shipment/waybill data set in developing its operating plan.

were only generally identified (*i.e.*, “Place/Pulled Industry”) and did not include milepost data or any other information that could be used to identify the location of the event or its nature (e.g., intermediate or local switching).

With respect to the electronic train movement data set, its primary deficiency was the lack of supporting information necessary to utilize and/or summarize the data (*i.e.*, lack of database structures, lack of field descriptions, lack of decoders for all the data included in each data field). On Reply, CSXT provided additional information in its workpapers to facilitate the use of the train movement data set but the train movement data remains incomplete.

The deficiencies and delayed production associated with these two data sets prohibited SECI from efficiently evaluating the actual movement of CSXT cars and trains by location at various times in the base period.

**ii. SECI’s Operating Plan Resolves  
These Data Problems**

The data problems summarized in the preceding section and described in detail in Rebuttal Exhibit I-1 required SECI’s experts to develop an operating plan without the ability to effectively model intermediate pickups/setouts of cars on the thousands of merchandise trains involved, or local train service. Thus, for modeling purposes, the only option available to SECI in preparing its Opening SAC evidence was to move complete trains between large numbers of O/D pairs. *See* SECI Opening at III-C-22-23. SECI’s RTC Model simulation and resulting comparative transit times showed that the SFRR has the

capacity and the ability to move its customers' traffic between the applicable on-SARR and off-SARR points in accordance with customer requirements.

This is not to say, however, that the SFRR's operating plan ignores the switching activity entailed in moving both SFRR and non-SFRR cars.

Although only through trains were included in the RTC modeling process, the SFRR train list also accounted for yard and local trains in addition to through trains. To the extent possible given their inability to make full use of CSXT's car event and train movement data in developing the SFRR's operating plan, SECI's experts identified all occasions where SFRR trains underwent an intermediate switch and/or a car was moved in local or yard train service. SECI's experts included reasonable costs for these switching activities, as a surrogate for the time-related costs of performing them (all of the output from an RTC Model simulation is time-related).<sup>7</sup> These cost surrogates are described in SECI's Opening Narrative at pp. III-C-24-25 and III-D-108-109.

CSXT argues that the switching costs assigned by SECI are not an adequate substitute for analysis of the actual cost of the facilities, equipment and operations necessary to serve shippers at intermediate and local points where yard or local service is involved, particularly because they involve system-average or historic cost calculations. *See, e.g.,* CSXT Reply at III-C-4. With respect to

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<sup>7</sup> They also included an intermodal lift/ramp cost as a surrogate for the cost of performing container/trailer lifts and ramping/deramping at SFRR origins or destinations for intermodal traffic. *See* SECI Opening at III-D-109-110.

facilities costs, as described in Part III-B-2 above and shown in Part III-F below, the SFRR is constructing the trackage necessary to reach every local origin, destination and interchange point. Costs have also been added to construct the yard and track facilities needed to serve local origins and destinations for intermodal and Transflo traffic.<sup>8</sup> Equipment and time-related operating costs are covered by the cost surrogates described in SECI's Opening Evidence.

In its Reply Evidence, CSXT finally provided some of the information (database queries/instructions)<sup>9</sup> needed by SECI's experts to determine at least some of the intermediate and local/yard switching activity that actually occurred for the SFRR trains containing cars for which SECI assigned a surrogate I&I or yard/local switch cost in its Opening evidence. SECI's experts have used this information to input additional train movement data into the RTC Model for several sample movements to test the validity of the switching cost surrogates used on Opening.

In selecting the sample movements, SECI's experts identified movements from CSXT train movement data that contained the information needed to model switching activities. As noted above, SECI's experts were not

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<sup>8</sup> As explained in the next section, SECI has not constructed the various additional regional and local yards for switching merchandise cars posited by CSXT because those yards are a function of the new, hypothetical blocking schemes and trains developed in CSXT's new operating plan, which the Board must disregard.

<sup>9</sup> CSXT still has not provided complete decoders and/or descriptions for all of the fields included in the train movement data. *See* Rebuttal Exhibit I-1 for details.

provided the decoders and descriptions needed to fully understand how to utilize and/or interpret CSXT's train movement records prior to the filing of SECI's Opening evidence. With some of the necessary information finally provided by CSXT with its Reply workpapers, SECI's experts were in a position to test the accuracy of the switching cost additives that were included as a surrogate on Opening. Even with some of the necessary information, however, CSXT's train data was not complete and a full switching activity analysis could not be performed. SECI, therefore, chose some actual CSXT switching movements, added them to the RTC Model simulation presented on Opening, and determined the incremental changes in time associated with including the switching activities that SECI was able to identify from the electronic data that CSXT provided. The incremental RTC changes were converted to incremental dollars, and compared to the cost additives SECI included on Opening.

As demonstrated below, the incremental RTC changes produced lower switching operating costs for the SFRR than the switching operating costs SECI included in Opening. On Rebuttal, SECI continues to use the SARR switching analysis that it developed and presented in Opening, even though that analysis produces higher costs than the costs produced by modeling a sample of actual CSXT switching activities.

SECI's experts selected the following sample movements for additional RTC modeling to compare the actual cost of performing the switching

service with the cost surrogates used by CSXT on Opening:<sup>10</sup>

1. Selkirk, NY to Waycross, GA.<sup>11</sup>
2. Amqui (Nashville), TN to Smyrna, TN
3. Atlanta, GA to Nashville, TN
4. Charleston, SC to Charleston, SC (local turn)

In conducting the test, SECI reviewed CSXT's car event and train movement data for all trains moving between these O/D pairs during the 15-day peak period used for SECI's Opening RTC Model simulation, as well as the data for yard train movements in each of the four corridors. The data that was inputted into the RTC Model (where usable) for each movement is described below.

Selkirk to Waycross. SECI's experts identified train movement and car event data for ten CSXT merchandise trains that originated at Selkirk, NY, reached the SFRR's lines at Alexandria Jct., MD (called Chesapeake Jct. in the train movement data), and terminated at Waycross, GA during the 2008 base

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<sup>10</sup> In addition to the movements listed, SECI's experts considered several other movements of local trains identified by CSXT in its Reply Evidence for consideration in its examination of the reasonableness of the switch additive. These included local trains moving between the following four O/D pairs: Jacksonville, FL to Callahan, FL; Richmond, VA to Hopewell, VA; Weldon, NC to Vulcan, VA; and Nashville, TN to Amqui, TN. Each of these local train movements was rejected from consideration for one or more to the following reasons: (1) the associated train activity was not accurately discernable from CSXT's data; (2) the only switching occurred at the movement's end points with no identification of what industry was switched; and/or (3) the trains operated off the SFRR route (*i.e.* the trains operated on other CSXT lines).

<sup>11</sup> The CSXT merchandise trains moving from Selkirk to Waycross (designated as "Q409" trains) reflect one of the principal examples used by CSXT to illustrate the alleged failure of SECI's operating plan to account for intermediate pickups and setoffs by the SFRR's merchandise trains. *See* CSXT Reply at III-C-21-24.

period corresponding to the SFRR's 2018 peak period.<sup>12</sup> The data for these trains is shown in Rebuttal e-workpaper "Sample\_CSXT\_Data\_Selkirk-Waycross\_(10 trains)\_v2.xlsx." The data shows that switching activity occurred at different locations on the SFRR route, depending on the particular train, primarily Richmond, VA, Rocky Mount, NC (designated as "Charlie Baker" in the train movement data) and Florence, SC. The more complete data for the comparable SFRR trains moving over part of the distance between Alexandria Jct. and Waycross were then input into the RTC Model, using CSXT's switching time allotment of 30 minutes at each location where a pickup or setout occurred.<sup>13</sup>

Amqui to Smyrna. SECI's experts identified 11 trains that moved in the peak period between the on/off-SARR points of Amqui or Nashville, TN and Smyrna, TN (Smyrna is a local origin/destination for SFRR merchandise traffic, as well as an intermediate point on the SFRR's line between Nashville and

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<sup>12</sup> The ten trains moving from Selkirk to Waycross are included in the RTC Model simulation presented in its Opening Evidence. Because of the difficulties with interpreting CSXT car event and train movement data, these ten trains are shown as entering and exiting the SFRR at three different on-SARR/off-SARR point pairs. These point pairs include three trains moving between Alexandria Jct, MD and Jessup, GA; six trains moving between Rocky Mount, NC and Waycross, GA; and one train moving between Rocky Mount, NC and Florence, SC. ATC revenues for SARR carloads moving on these ten trains correspond with the three on-SARR/off-SARR point pairs rather than from Alexandria Jct. to Waycross.

<sup>13</sup> See, e.g., CSXT Reply at III-C-90, 91. SECI's experts note that it while it is possible (given the information provided by CSXT for the first time on Reply) to identify the intermediate switching activity for a few individual trains that moved during the RTC peak period, it would be much more difficult to do this for the thousands of trains carrying SFRR traffic that moved in the base year. See Rebuttal Exhibit I-1 at 22-24.

Chattanooga, TN). The movement data for these trains is shown in Rebuttal e-workpaper “Sample\_CSCT\_Data\_Amqui-Smyrna\_(11 trains).xlsx.” As shown in the workpapers, two CSXT data sources were used to identify switching activity for these trains: train movement data for the first six trains and car event data for the last five trains. The movement data for these SFRR trains was also input into the RTC Model, with similar time allotments for switching activity described above in connection with the Selkirk-Alexandria Jct.-Waycross movements. For the last five trains identified from CSXT car event data, the trains came on-SARR at Smyrna, where the crew is assumed to perform switching activity (removal or addition of loaded and/or empty cars) before the train moves on to Nashville or Kayne Avenue Yard. Half an hour of switching dwell time was allotted at Smyrna for all trains except {

} The crews for these

trains are based at the SFRR’s Nashville Yard.

Atlanta to Nashville. SECI’s experts initially identified 37 trains moving between Atlanta (or intermediate points) and Nashville (or intermediate points). However, complete train movement data was available for only 26 of these trains; the event data for 11 of these trains was unusable.<sup>14</sup> The train movement data for these 26 trains is shown in Rebuttal e-workpaper

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<sup>14</sup> The train movement data for these 11 trains does not indicate any switching activity at an on-SARR station.



“Sample\_CSXT\_Data\_Atlanta-Nashville\_(26 trains).xlsx.” This data was also input into the RTC Model, with time allotments for pickups and/or setouts at intermediate points (or at the on/off-SAAR points) as described above.

Charleston to Charleston local turn. SECI’s experts initially identified 15 trains that moved in the 2008 base period with both an on-SARR and an off-SARR point of Charleston, SC – thus indicating that these trains were “turn” locals that originated and terminated at the same SFRR station. However, the movement data was unusable for five of these trains because it does not indicate any switching activity at an on-SARR location. The train movement data for the remaining ten trains is shown in Rebuttal e-workpaper “Sample\_CSXT\_Data\_Charleston\_(10 trains).xlsx.” A review of this data indicated these trains had no identifiable switching activity while on the SFRR. All of these trains {

}<sup>15</sup> In addition, there is an unexplained inconsistency between the “departure” loads and empties at each station and the “arrival” loads and empties at each station (again, the “arrival” numbers are identical for each station). SECI’s experts were unable to determine the reason for this inconsistency because CSXT

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<sup>15</sup> This situation identifies another problem with the data provided by CSXT. It is possible that some cars were dropped off at a particular station and the same number of cars were picked up at the same station, but there is no way to tell if this occurred from the CSXT train movement data that SECI’s experts were able to query after reviewing CSXT’s Reply Evidence.

did not provide complete decoders or descriptions for this data. For these reasons, the Charleston-Charleston trains were not included in the RTC test simulation.

The continuing problems with the Charleston-Charleston local train data illustrate why, even now, it is impossible to model many of the intermediate activities of trains that actually carry SFRR traffic. The event data for the Charleston-Charleston trains do not show that any intermediate switching activity actually occurred while these trains were on the SFRR system – yet SECI included a local train switch additive<sup>16</sup> for each of these trains. To the extent that the train movement and/or car event data provided by CSXT is complete, then SECI overstated the costs associated with these trains.

Yard trains. In the course of reviewing the CSXT-provided train movement and/or car event data for the four groups of movements discussed above, SECI's experts identified a total of 19 yard trains (trains that switched local industries in the vicinity of yards) that were associated with these movements and that were included in the base-year train list for the SFRR. However, meaningful CSXT event data could only be found for three yard trains.<sup>17</sup> The car event data

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<sup>16</sup> In each instance, SECI's experts applied a cost per switch engine minute to an assumed eight-hour per day local train assignment, i.e., 480 minutes times the cost per switch engine minute found in CSXT's agreement with CSXI for providing similar services.

<sup>17</sup> CSXT yard trains are not included in the train movement database. The movement of yard trains can only be discerned from CSXT's car event database and shipment database. Most yard trains could not be analyzed for one or more of the same reasons other trains were excluded from this analysis: (1) yard train activity was not discernable from CSXT data, (2) the only switching that occurred

that SECI was able to glean for these three trains is shown in Rebuttal e-workpaper “Sample\_CSXT\_Data\_Yard Trains\_(3 trains).xlsx.” Two of the three trains operated in the Charleston area; the third operated in the Atlanta area. As with the Charleston-Charleston local trains discussed above, the car event data shows that {

} Thus there was no way to determine what activity (if any) was performed at each point, which made it pointless to try to include these trains in the RTC Model. Yet each of these trains (including the other 16 yard trains that SECI’s experts included in the base-year train list but for which no meaningful event data could be found) was included in calculating the yard switching cost additive that SECI provided for in its Opening evidence. In each case SECI’s experts applied a CSXT 2008 URCS system average cost per switch engine minute to an assumed eight-hour train assignment (*i.e.* 480 minutes) to develop the costs associated with the yard train switch additives. Given the lack of CSXT-provided data as to what switching work was actually performed by these trains, SECI’s approach was very conservative.

With respect to the intermediate or origin/destination switching for the trains moving in the three corridors that SECI’s experts were able to include in the RTC Model, the results of the RTC switch-train test simulation demonstrate that the switch cost additives applied by SECI in its Opening evidence were

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was at the movement’s end point(s) with no identification of the industry involved; and/or (3) the yard train operated off the SFRR system.

reasonable. To confirm the reasonableness of these switch cost additives, SECI's experts performed the following tasks:

1. Intermediate switching time was incorporated into the Opening RTC Model simulation for each of the 47 test trains moving in the three corridors described above, resulting in revised RTC Model transit times for the entire model period;
2. Based on the revised RTC transit times, revised operating statistics were calculated for all the trains in the 2008 base year:<sup>18</sup>
3. Using the revised operating statistics from Step No. 2 above (indexed to 2009 using the ton-mile index), 2009 revised operating expenses were determined based on the operating unit costs presented by SECI in its Opening Evidence and the switch additive expenses related to the 47 trains were then removed from the revised operating expenses; and
4. The 2009 operating expenses included in SECI's Opening Evidence were compared to the 2009 revised operating expenses calculated using the revised operating statistics (Step No. 3 above).

Based on the above steps, SECI's experts developed three comparisons of the results of the test train analysis to demonstrate the reasonableness of SECI's switch cost surrogates. First, the revised 2009 incremental operating expense, based on RTC results including intermediate switch times for the 47 test trains and excluding the switch cost additive associated with these 47 trains was \$262.7 million. This is less than the 2009 operating expense of \$263.9 million included in SECI's Opening Evidence. Stated

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<sup>18</sup> The revised operating statistics included locomotive unit miles, locomotive hours, SARR car miles, non-SARR car miles, SARR car hours and non-SARR car hours for all trains in the 2008 base year.

differently, SECI's use of the switch cost additive in its Opening Evidence overstated the cost associated with actual intermediate switching for these trains.

Second, based on information contained in CSXT's train movement data, these 47 trains switched { } cars at intermediate points on the SFRR. SECI's Opening evidence included I&I switch events for { } cars for these same 47 trains, which means SECI included operating costs for { } more switch events than those that actually took place.

Third, and as noted above, during the peak period 15 local switch trains operated in the Charleston, SC area but SECI's experts were unable to identify any switching activities based on CSXT-provided data. In addition, two yard trains operated in Charleston and one yard train operated in Atlanta during the peak period but, again, SECI was unable to identify any switching activities from the CSXT-provided data. However, in its Opening Evidence SECI included annualized switch additive expenses for all of these local and yard trains in the amount of \$807,007. In other words, SECI has included switch expenses for local and yard trains whose specific operations SECI was unable to verify based on CSXT-provided data.

**c. CSXT's Operating Plan Does Not Meet the  
Requirements of the SFRR's Traffic Group**

Rather than work with SECI's operating plan, which is based on the movement of actual CSXT trains that carried SFRR traffic on the SFRR system in the base year, and conduct a simulation of those train movements based on

corrected inputs into the RTC Model, CSXT chose to create an entirely new operating plan and model different train operations for non-coal and other bulk traffic under that plan. CSXT's new operating plan is not based on the actual CSXT general freight and intermodal trains that moved over the SFRR's lines in the base year. CSXT ignored the actual trains that moved through the on-SARR point, and instead lumped together all of the cars handled by the SFRR in the base period using the cars' on-SARR points, and then created new blocks of cars at the SARR origin and (in some cases) intermediate points for the various destinations involved with the assistance of the MultiRail computer program. From there, the MultiRail program was used to create all new trains that appear to run on a fixed schedule and without regard to any real-world CSXT trains.<sup>19</sup>

If the complainant's operating plan for a SARR is feasible, or errors in it can be corrected to make it feasible, a defendant may not propose an entirely new operating plan for the SARR in its reply evidence. The Board has accepted a new operating plan propounded on reply only where the complainant's plan provided service to the SARR's customers that was different from the service provided by the incumbent, thus making the complainant's operating plan unworkable and leaving the Board no alternative but to accept the defendant's operating plan. *See Duke/NS* at 117-121; *Duke/NS II* at 11 ("Because Duke failed

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<sup>19</sup> Neither the MultiRail program nor the input files used to develop CSXT's operating plan were included in CSXT's workpapers. CSXT belatedly provided the MultiRail program and input files to SECI on March 17, 2010, or less than a month before the Rebuttal due date. SECI's experts were subsequently able to confirm that the MultiRail was used to create entirely new blocks and trains.

to provide workable operating plans for its SARRs [in STB Docket Nos. 42069 and 42070], the Board relied on the operating plans submitted by NS and CSXT”).

In this case, it is CSXT’s new operating plan that is not feasible because – unlike SECI’s operating plan – it would provide service to the SFRR’s non-coal customers<sup>20</sup> that is significantly different from the service provided by CSXT (the incumbent) in the real world. While SECI’s operating plan is based on the actual CSXT trains that moved the traffic selected for inclusion in the SFRR’s traffic group over the SFRR’s lines, CSXT’s operating plan is not. Most of the SFRR’s merchandise traffic is interlined with other railroads, primarily CSXT. CSXT’s operating plan ignores the non-coal CSXT trains on which SFRR cars arrived at the interchange points and creates new blocks of cars which move on brand-new trains at set times, with no regard for the time sensitivities (or real-world transit times) of any of the reshuffled traffic. This is confirmed by CSXT’s description of how the MultiRail computer model was used in developing its operating plan.<sup>21</sup>

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<sup>20</sup> More than half of the SFRR’s peak-year loaded cars contain non-coal traffic, and about 77 percent of the non-coal carloads are merchandise traffic with the other 33 percent consisting of intermodal traffic.

<sup>21</sup> See CSXT Reply e-workpaper “MultiRail Operating Plan Development Process Description.doc.” As described therein, the MultiRail model was used to develop a blocking plan for the SFRR’s traffic in conjunction with the on-SARR and off-SARR locations. Once the blocks were created, “the traffic was flowed using the MultiRail© tool to generate block volumes and sequences in order to move the traffic from origin to destination. Once the traffic was moving on blocks, we proceeded to build the Train Plan based on blocked volumes. . . . The Blocking Plan for the [new] SFRR Yards dictated the trains that would be required

Unlike SECI's operating plan, which moves the SFRR's cars in the same trains received from CSXT or other interline connections through the interchange point, thus maintaining the continuity of each movement, CSXT's operating plan does not maintain any continuity with the trains on which the cars were received at the on-SARR point. Rather, CSXT identified all SFRR cars moving to the same on-SARR locations and then modeled a new way to move them, using the MultiRail program to create hypothetical new blocks of cars and hypothetical new trains in which to transport them.

For example, a real-world CSXT train that originates at CSXT's Avon Yard near Indianapolis and terminates at Nashville may contain a block of SFRR cars that move between Avon Yard and Nashville via Princeton, IN (the on-SARR point for this train). In the real world the train does not stop at Princeton. Therefore, CSXT's operating plan creates a new block of SARR cars at Avon Yard and has the train drop them off at Princeton, rather than carrying them to Nashville (without accounting what happens to the real-world train beyond Princeton). Other trains moving through Princeton, destined to other points served by the SFRR, are blocked in the same manner. CSXT then effectively

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to move the blocks based on block category, volume, length, tonnage and destination." *Id.* at 5, 6.

CSXT did not provide the MultiRail program itself to SECI until March 17, 2010 – less than a month before the due date for Rebuttal evidence. Despite the delay, and after some training by the program's proprietor, SECI's experts were able to verify that CSXT used it to create hypothetical new blocks of cars and trains for movement on the SFRR in the manner described in the text.



erects a wall around the SFRR, using the MultiRail program to make up hypothetical new blocks of cars at Princeton and new trains in which to move them to a local destination or to an off-SARR interchange point. No attempt is made to link the trains and cars that move to an off-SARR interchange point with the real-world CSXT trains that actually moved the cars beyond that point to final destination.<sup>22</sup> CSXT also used the MultiRail program to make up hypothetical empty cars to include on these trains based on URCS empty/loaded factors by car type and ownership.

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<sup>22</sup> CSXT's disregard for the movement of actual CSXT trains over the SFRR and its creation of hypothetical blocks of cars and hypothetical trains results in the SFRR classifying more cars than it needs to because it has to re-block the cars that CSXT trains deliver to the on-SARR location, and also results in the assignment of unnecessary yard crews and yard engines at numerous locations throughout the SFRR system. With respect to the Princeton example, as shown in Reply e-workpaper "GF – SFRR 2018 Yard Switching Crews/Locos.pdf", CSXT assumes that 780 cars per day (or nearly 285,000 cars per year) must be removed from existing CSXT trains and re-blocked into new trains at Princeton. All cars moving through Princeton are interchange-received or forwarded with CSXT at Princeton and no cars are originated or terminated by the SFRR at this location. As noted in the text, all of the cars received from CSXT at Princeton are received in trains that are already blocked to SFRR destinations or interchange points. In other words, there is no reason for the SFRR to break these trains into individual cars, re-block the cars and then make up new trains. Yet, CSXT assigns five crews and five switch locomotives, each working three shifts per day, seven days per week, 365 days per year, at Princeton to perform these unnecessary re-blocking tasks.

By contrast, the SECI operating plan accepts the CSXT trains intact at interchange, using run-through locomotives. SECI's RTC Model simulation properly includes time for the interchange of these trains at Princeton, and after receipt the trains then move over the SFRR either to interchange back to CSXT or to a subsequent SFRR location for distribution.

The trains that resulted from this process are scheduled trains that leave the on-SARR point (or an intermediate point if that is the train's origin) not on the basis of real-world CSXT operations, but rather at the same time for every day that the particular train is scheduled to operate (not all trains are scheduled to run seven days a week).

The net result of CSXT's operating plan is that the trains created by using the MultiRail program are not based on the actual movement of merchandise carload traffic (in particular) in the base year, as represented in the CSXT waybill/car/train event data produced in discovery. By virtue of the methodology that CSXT employed, SFRR cars from trains that arrived at the on-SARR point are removed and held for blocking (along with other cars from other trains) and subsequent movement on the SFRR in hypothetical new trains. Although CSXT modeled the operation of these new trains on the SFRR using the RTC Model, it did not provide any information that enables the cars on the new SARR trains to be linked with the actual trains on which they arrived at the on-SARR point (or departed from the off-SARR point). Thus, no information was provided that SECI (or the Board) could use to evaluate the transit time for a car from the time it arrived at the on-SARR point to the time it arrived at its destination (whether a local destination or an off-SARR interchange point). This is confirmed by the fact that, rather than presenting such transit time information from its RTC Model

simulation, CSXT presented only average SFRR train speeds. *See* CSXT Reply at III-B-35.<sup>23</sup>

CSXT's creation of new blocks and trains to move SFRR cars from the on-SARR point means there is no way to determine whether CSXT's operating plan enables the SFRR to meet the transportation needs of the members of its merchandise (and intermodal) traffic group – the key ingredient of a feasible SARR operating plan. *Duke/NS II* at 11;<sup>24</sup> *see also* *PSCo/Xcel* at 610 (“the proponent of a SARR may not assume changed levels of service from those currently offered merely to minimize the costs of the SARR’s physical plant and operations, unless it presents evidence showing that the affected shippers, connecting carriers and receivers would not object [citation omitted]”).

Transit times are a key component of rail transportation service, and because CSXT's operating plan does not link trains arriving at on-SARR points with SFRR trains leaving those points, the Board cannot tell whether that plan enables the SFRR to meet its customers' service requirements. CSXT's operating

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<sup>23</sup> Despite all of CSXT's rhetoric about the inadequacies of SECI's operating plan, the table on page III-B-35 shows average SFRR train speeds resulting from both SECI's and CSXT's RTC Model simulations to be similar (in CSXT's own words, “comparable and acceptable.” *Id.* at III-B-34).

<sup>24</sup> The SARR operating plans rejected in *Duke/NS II* substituted different trains and train sizes to move the SARR customers' coal traffic from various mine origins, resulting in different service than the customers received in the real world. In this case, CSXT's operating plan, similarly, substitutes different trains for non-coal traffic from those that operated in the real world.

plan – including its blocking schemes, new train service, and new yards – must therefore be rejected by the Board.

**d. Unlike SECI's Operating Plan, CSXT's Operating Plan Cannot Be Used to Determine the SFRR's Operating Expenses With Reasonable Accuracy**

In addition to having to be capable of providing the service required by the SARR's customers, a SARR operating plan is a prime determinant of the configuration (physical plant) and annual operating expenses of the SARR. *AEP Texas* at 16; *Otter Tail* at 18; *Duke/NS* at 99. In this case, neither party's operating plan enables a precise determination of the SFRR's annual operating expenses based on how its traffic actually moves. SECI's operating plan is based on actual, real-world CSXT trains but omits the intermediate and local switching operations performed on merchandise and other cars in the real world due to the underlying data problems described earlier. However, SECI included a reasonable surrogate for the costs entailed in these operations in calculating the SFRR's annual operating expenses.

Like SECI's operating plan, CSXT's operating plan also omits the actual switching operations entailed in moving non-coal traffic between its on-SARR points and its off-SARR points. (This is a tacit recognition that CSXT's own experts were unable to synchronize all of the databases required to ascertain exactly how all of the SFRR's cars move in the real world.) Instead, CSXT substitutes completely different operations by using the MultiRail program to help create hypothetical new blocking schemes and hypothetical new trains. CSXT's

subsequent development of annual operating statistics for the SFRR (used in calculating its annual operating expenses) is inconsistent with Board precedent.

The trains developed using the MultiRail program were run through the RTC Model by CSXT. As best SECI's experts can determine given the short time available after receipt of the MultiRail program, the program then generated various operating statistics (such as car-miles, gross ton-miles, car-days on the SFRR) for one day. Annual statistics were developed by multiplying these average daily statistics by 365 days.

CSXT's method of calculating annual statistics by using peak day statistics and multiplying them by 365 days to represent annual statistics has been rejected by the Board on numerous occasions. Most recently, in *WFA/Basin*, the Board rejected the increase of a peak week's statistics to the entire year, stating:

WFA's approach risks substantially over- or understating the annual operating statistics if the peak-week traffic mix is not representative of the annual traffic. See Otter Tail at C-2. For example, if during the peak week, the LRR were to serve a mix of traffic that is predominantly less expensive to service (e.g., the short-haul southbound PRB traffic) than the overall traffic mix throughout the year, then simply multiplying the peak week operating statistics by 366 and dividing by 7 would not accurately reflect the annual operating expenses. BNSF's approach is more precise, as it relies on the actual traffic forecast for that year. It is also the approach used by the Board in recent SAC cases.

*Id.* at 33. In this case, CSXT's approach increases the risk of over- or understating operating statistics substantially by using a single peak day's statistics to calculate the SFRR statistics for the entire year. By contrast, SECI calculates

annual statistics by applying the average transit times from the RTC model to all trains moving over the SFRR during the base year, thereby eliminating the risk of overstating or understating the annual statistics.

In short, notwithstanding the unavoidable limitations imposed by the CSXT data deficiencies described earlier, SECI's operating plan, combined with its switching cost surrogates, enables a reasonable calculation of the SFRR's operating expenses and otherwise meets the objectives of the SAC test. CSXT's operating plan does not.

As the Board held in *Duke/NS*,

. . . a railroad may not take unfair advantage of weaknesses in the shipper's opening evidence by submitting reply evidence that is itself unsupported, infeasible or unrealistic, or that presents criticism without appropriate evidence that can be used in the Board's SAC analysis [fn. omitted].

*Id.* at 101. This is precisely what CSXT is attempting to do in this case. In the unique circumstances presented, the Board should accept SECI's operating plan as the best evidence of record and reject CSXT's operating plan.

**e. Traffic Flow and Interchange Points**

The SFRR's traffic flows are described in Part III-C-1-a of SECI's Opening Evidence. As discussed in Part III-A, the principal changes SECI has made on rebuttal involve reductions in coal traffic volumes due to (1) changes in coal forecasts, and (2) the exclusion of some coal traffic that did not "touch" the SFRR system in 2008 to avoid external reroutes. The net result is a decline in the

SFRR's peak-year (2018) coal traffic volumes, as shown in Table III-C-1 on page III-C-2 of SECI's Opening Narrative. Intermodal and general freight volumes were also adjusted as discussed in Part III-A. The corrected traffic volumes for each category of SFRR traffic are shown in the revised version of Table III-C-1 set forth below.

<b>TABLE III-C-1 (Revised)</b>		
<b>SFRR 2018 TRAFFIC VOLUME</b>		
	<b>Cars/Containers</b>	<b>Millions of Tons</b>
<b>Coal<sup>1/</sup></b>	<b>579,277</b>	<b>64,098,058</b>
Local	90,232	10,451,311
Interline Forwarded	16,134	1,863,928
Interline Received	10,325	1,205,008
Overhead	462,586	50,577,811
<b>Intermodal<sup>2/</sup></b>	<b>707,082</b>	<b>9,318,202</b>
Local	22,242	220,136
Interline Forwarded	214,709	2,472,406
Interline Received	231,564	3,498,981
Overhead	238,567	3,126,679
<b>General Freight<sup>3/</sup></b>	<b>555,177</b>	<b>40,006,556</b>
Local	33,326	2,391,479
Interline Forwarded	64,057	5,502,800
Interline Received	89,912	7,130,678
Overhead	367,882	24,981,599
<b>Total</b>	<b>1,841,536</b>	<b>113,422,816</b>
<sup>1/</sup> Source: "Coal Traffic Forecast Rebuttal.xlsx," level "O.C. Cont. & Car Forecast," range AE10395 to AY1039. <sup>2/</sup> Source: "Intermodal Tons & Rev Rebuttal.xlsx," level "SFRR Forecast Summary," range ED246 to EM246. <sup>3/</sup> Source: "CSXT Carload Forecast Rebuttal.xlsx," level "SARR Traf 2008," range EN2443 to EW 2443.		

These changes in volume results in a reduction in the SFRR's traffic density by line segment. The revised densities (which replace those shown in Table III-B-2 on page III-C-4 of SECI's Opening Narrative) are as follows:

<b>TABLE III-C-2 (Revised)</b> <b>SFRR 2009 TRAFFIC DENSITY BY LINE SEGMENT</b>	
<b>Line Segment<sup>1/</sup></b>	<b>Density (millions of gross tons per mile)</b>
<i>West Division</i>	
Princeton (North Gibson) to Evansville	30.2
Evansville to Nashville	34.2
Nashville to Widows Creek	35.4
Widows Creek to Junta	28.2
Junta to Atlanta	53.6
Atlanta to Manchester	38.5
Manchester to Folkston	36.6
Folkston to Callahan	45.8
Callahan to Jacksonville	24.6
Jacksonville to Bostwick	14.4
<i>East Division</i>	
Haywood/Consol 95 to Brownsville <sup>2/</sup>	6.5
Brownsville to McKeesport (Demmler Yard)	24.7
McKeesport to Cumberland	25.0
Cumberland to Point of Rocks	37.6
Point of Rocks to Alexandria Jct.	25.7
Alexandria Jct. to Richmond	24.0
Richmond to Bellwood	29.6
Bellwood to Roanoke Rapids	21.3
Roanoke Rapids to Pembroke	15.4
Pembroke to Charleston	14.6
Charleston to Savannah	8.2
Savannah to Folkston	8.6
<sup>1/</sup> Tonnages shown for a line segment are the maximum tonnages moving over any part of the segment – volumes may not be uniform for the entire segment.  <sup>2/</sup> The maximum density shown for the Robinson Run Branch (Haywood/Consol 95 to Brownsville) is for the portion south of Catawba Jct. that the SFRR is constructing.	



The SFRR's interchanges have been modified from Opening. The corrected interchange locations (and connecting carriers) are discussed in Part III-B-1-c above and shown in Rebuttal Exhibit III-B-1.

**f. Track and Yard Facilities**

The SFRR's track and yard facilities, with the modest changes described in Part III-B-2 above, are shown schematically in Rebuttal Exhibit III-B-2. The SFRR's main line and branch line track configuration has been accepted by CSXT almost without exception. The parties differ as to the SFRR's yard requirements, but most of the difference stems from CSXT's improper inclusion of new yards resulting from the new blocking schemes that underlie its new SFRR operating plan. Since the Board must reject CSXT's new operating plan, it must also disregard the new yard facilities proposed by CSXT for intermediate and local switching of blocks of cars.<sup>25</sup> On Rebuttal, SECI has added yard tracks for originating and terminating both intermodal trains and Transflo shipments at five locations, and for terminating only Transflo shipments at five additional locations. See Rebuttal Table III-B-1 on page III-B-21 above.

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<sup>25</sup> The cost of intermediate and yard/local switching, which includes a capital element, is covered by SECI's I&I and yard/local switch cost additives.

**g. Trains and Equipment**

**i. Train Sizes**

SECI's operating plan specifies that the SFRR's train sizes for each origin/destination ("O/D") pair are the same as the actual CSXT train sizes for the base year. When coal traffic for an O/D pair is forecasted to increase, a completely new "growth" coal train is added for that O/D pair.<sup>26</sup> To accommodate merchandise traffic growth, SECI added cars to existing (2008) trains up to the maximum number of cars reported in the CSXT train/car movement data for each train type, subject to a maximum of 150, cars before it developed separate "growth" trains. See SECI Opening at 10-11.

CSXT asserts that the large train sizes assumed by SECI for some merchandise trains resulted in too many locomotives being placed at the front and/or rear of the train, which would result in operational problems such as broken couplers. CSXT Reply at II-C-30-32, 75. This assertion appears to be based on the "standard" locomotive configurations adopted in SECI's operating plan and SECI's placement of locomotives on trains in the RTC Model.

The standard or normal locomotive consist for all trains under SECI's operating plan is three locomotives in a 2/1 distributed power or DP

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<sup>26</sup> After reviewing some discrepancies in the SFRR's coal-train sizes compared with CSXT's, SECI's experts have corrected the loaded and empty cars on the coal trains included in the peak train list to match the train sizes shown in CSXT's Reply e-workpaper "Breakdown\_Load\_Empty\_Trains.xls." The corrected train sizes are used in SECI's Rebuttal RTC Model simulation.

configuration, with two locomotives on the front of the train and one locomotive on the rear. A second DP locomotive (or a two-unit helper consist) can also be added to the rear of coal trains. Some SFRR trains require as many as five locomotives,<sup>27</sup> and in SECI's RTC Model simulation, for convenience, the additional locomotives are simply added to the front and/or rear of the train because the Model determines locomotive requirements based on total horsepower per trailing ton, and does not differentiate where the locomotives are placed in the train.

SECI's operating experts of course agree that where five locomotives are needed for a particular train they must be interspersed within the train, rather than being placed only on the front and/or rear of the train. The SFRR's locomotive placement rules, by train type, are shown in Rebuttal e-workpaper "Loco Placement.pdf." These rules are an integral part of SECI's operating plan, although they were not specifically referenced in SECI's Opening Evidence. The trains received in interchange from CSXT (or another carrier) are assumed to have their locomotives in the proper configuration, but if not, the SFRR places the locomotives in the proper configuration pursuant to these rules at the interchange point or another crew-change point.

CSXT also notes that SECI did not include the tare weights of the cars in calculating gross train weights for loaded base year coal trains. CSXT

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<sup>27</sup> In SECI's Rebuttal RTC simulation all trains are limited to a maximum of five AC4400 (4400 horsepower) locomotives, including helpers where applicable.

Reply at III-C-32. SECI agrees that the tare weights on loaded base year coal trains were inadvertently omitted from the Opening RTC train list. SECI has corrected this omission for purposes of its Rebuttal RTC simulation by setting the gross weight of loaded cars to equal 136.9 tons per car. This is the gross weight used by SECI's experts for growth coal trains, which CSXT accepted as having been properly calculated (CSXT Reply at III-C-32).<sup>28</sup>

**ii. Locomotives**

CSXT has accepted SECI's specification of GE 4400-horsepower AC locomotives for road and helper service, EMD SW1500 locomotives for yard switching and work-train service. However, CSXT asserts that more locomotives of each type are needed. The differences between the parties are summarized in Rebuttal Table III-C-2 below.

<b>REBUTTAL TABLE III-C-2 SFRR PEAK LOCOMOTIVE REQUIREMENTS</b>			
<b>Type of Service</b>	<b>SECI Opening</b>	<b>CSXT Reply</b>	<b>SECI Rebuttal</b>
Road/Helper– AC4400CW	194 <sup>1/</sup>	196	191
Switch/Work Train – SW1500	8	41	10
<b>Total</b>	<b>202</b>	<b>237</b>	<b>301</b>
<sup>1/</sup> The number of road/helper locomotives shown in Table III-C-2 on page III-C-11 of SECI's Opening Narrative (171) was incorrect. The correct number of locomotives required in the peak year was 104, as shown in SECI's Opening workpapers.			

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<sup>28</sup> The gross coal car weight calculation for growth trains is shown in SECI Op. e-workpaper "SARR Event peak period trains 070609 coal gf im CHK PR-SUBS TRN ONOFFS and FIXED SORT2.xlsx."

**(a) Road and Helper Locomotives**

SECI's revised calculation of the SFRR's road locomotive requirements is based on its Rebuttal simulation of the SFRR's peak operations using the RTC Model, including helper requirements in the SFRR's two helper districts,<sup>29</sup> plus a spare margin of 3.7 percent. CSXT accepts the 3.7 spare margin (CSXT Reply at III-C-78), but otherwise disagrees with SECI's methodology for calculating the SFRR's road locomotive requirements.

CSXT's calculation of road locomotive requirements is based on the peak hour of the peak week's train count and the locomotive requirements for each train.<sup>30</sup> However, to the extent the peak-day train count and resulting locomotive calculations are based on the new road and local train movements described in CSXT's operating plan, the calculations must be disregarded because, as explained earlier, CSXT's operating plan must be rejected.

Moreover, CSXT's method of calculating annual statistics by using peak day statistics and multiplying them by 365 days to represent annual statistics

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<sup>29</sup> At page III-C-80 of the Reply Narrative CSXT asserts that the SFRR has four helper districts, but that SECI provided helper locomotives for only two districts. In fact, the SFRR has two helper districts, not four, as discussed in Part III-B-2-d above. Thus the helper locomotive requirements described in SECI's Opening Narrative are correct.

<sup>30</sup> See Reply e-workpaper "Peak Period Road Locomotive Count.xlsx," tab "SFRR\_CSXT\_REPLY\_CASE\_TIMESTAMP." This spreadsheet shows that CSXT selected the number of road locomotives required by the SFRR based on the number of locomotives in service at 11:00 A.M. on August 8, 2018. In other words, CSXT bases the SFRRs' locomotive requirements on the single *hour* in the entire peak week with the greatest number of locomotives in service.

has been rejected by the Board. *See WFA/Basin* at 33 (quoted on page III-C-28, *supra*). CSXT's approach is even more egregious than the approach rejected in *WFA/Basin*, as CSXT has used a single peak hour's statistics to calculate the SFRR locomotive requirements for the entire year.

By contrast, SECI calculates annual statistics by applying average transit times for the peak week from the RTC model to all trains moving over the SFRR during the base year, thereby eliminating the risk of over- or understating the annual statistics. This is the same methodology accepted by the STB in all recent SAC proceedings. In short, CSXT's criticism of SECI's methodology for calculating locomotive requirements is totally misplaced and it is CSXT's mathematical approach that is in error.

**(b) Switch/Work Train Locomotives**

SECI's operating plan originally provided eight SW1500 locomotives for use in switch and work-train service, with two of these locomotives stationed at each of the SFRR's four yards where 1,000/1,500-mile inspections and bad order/spare switching of cars are performed. These locomotives (as well as spare road locomotives) are also used for work-train service as needed.

CSXT's new operating plan calls for a total of 39 SW1500 locomotives to be used in yard switching service and an additional two SW1500 locomotives devoted to work-train service, for a total of 41. CSXT Reply at III-C-

82-83.<sup>31</sup> On further reflection, and given the distances between the SFRR's four principal yards (more than 500 rail miles), SECI's operating experts concur that two SW1500 locomotives should be devoted to work-train service (they can also be used as spare yard switching locomotives). However, SECI's experts disagree that more than eight locomotives are needed for yard switching service.

CSXT's calculation of yard switcher requirements is based on "the average daily count of merchandise cars that would require switching at each of the 13 regional and local SFRR general freight yards defined in CSXT's operating plan" (CSXT Reply at III-C-82). Those yards, and the associated switching, are a function of the car blocking schemes and hypothetical new trains associated with CSXT's operating plan. As explained earlier, CSXT's new operating plan and its associated brand-new trains must be rejected by the Board because CSXT has not demonstrated that its operating plan enables the SFRR to meet the transportation service requirements of its traffic group, as measured by transit times that link the SFRR's trains with the CSXT trains at the on-SARR points. Accordingly, the additional yards and yard-switching components of CSXT's operating plan must also be rejected.

Again, SECI recognizes that some intermediate and local switching of trains containing cars with SFRR traffic is required. SECI has accounted for

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<sup>31</sup> At page III-C-76 of the Reply Narrative CSXT states that a total of 42 SW1500 locomotives are needed. Based on the more complete description on pages III-C-82-83, as well as CSXT's workpapers, the number actually proposed by CSXT is 41.

this in its I&I switching, yard/local switching, and intermodal lift/ramp cost additives. These cost additives reflect all costs of providing switching services, including equipment (locomotive) costs, at intermediate points and points served by local trains. Adding costs for additional, specific switching locomotives, over and above the eight locomotives provided on Opening, would result in a double-count of these costs.

With respect to the yard facilities added at ten locations to handle locally-originated and terminated intermodal and Transflo traffic, the facilities at Nashville have been added to the existing SFRR yard at that location and the SW1500 locomotives based at Nashville can handle any required switching of intermodal and Transflo cars. The other nine locations involve small new yards, as described in Part III-B-2-e above. The daily volume of traffic moving to and from these facilities is low (generally less than two trains a day), and the road locomotives on arriving and departing trains can easily handle the minimal switching requirements involved in placing and removing intermodal trains from the proper tracks and spotting and pulling cars at the Transflo terminals.

### **iii. Railcars**

CSXT has accepted SECI's general approach to determining the SFRR's freight car requirements, including the distribution of system, foreign and private cars among the SFRR's traffic types and SECI's proposed 5 percent spare margin. CSXT Reply at III-C-84. However, CSXT rejects SECI's use of operating statistics (car-miles and car-hours) developed from SECI's "fatally



flawed” RTC Model simulation to calculate the SFRR’s requirements for each category of car. Rather, CSXT uses similar statistics from its own RTC simulation of train movements and local train switching activity based on its new SFRR operating plan. As explained above, it is CSXT’s operating plan that is “fatally flawed,” and its rejection also requires rejection of the operating statistics and freight car requirements developed from CSXT’s RTC simulation.

## **2. Cycle Times and Capacity**

CSXT opens its SFRR capacity analysis by repeating its *mantra* that SECI’s operating plan is flawed, and the output from SECI’s RTC Model simulation should be disregarded, because SECI did not model pickups and setouts of cars at intermediate points and local customer locations. CSXT Reply at III-C-85-87. As explained previously, SECI’s operating plan does account for intermediate and local switching activity, but those activities could not be modeled because of problems with the CSXT car event and train movement data produced in discovery. Hence, SECI modeled trains moving as a unit between each distinct O/D pair during the peak period.

CSXT also observes (*id.*) that SECI used the RTC Model to generate train transit times, rather than train cycle times. This is correct – and entirely appropriate because most of the SFRRs’ trains are merchandise and intermodal trains that do not shuttle or “cycle” back and forth between specific origins and specific destinations, as unit coal trains do. Either transit times or cycle times can be used to generate operating statistics. Transit times can also be used to compare

a SARR's service with the incumbent's service, which is a key element in determining whether the SARR meets the transportation requirements of its customers.

CSXT focuses almost entirely on the SFRR's merchandise traffic in arguing that its own operating plan (and accompanying RTC Model simulation) should be accepted in lieu of SECI's. CSXT notes that its operating plan "incorporates both the facilities and the time required to perform the classification and switching necessary to move the SFRR's merchandise traffic expeditiously through the system, and to provide pick-up and delivery of cars at customer locations" and that its RTC simulation confirms the SFRR's ability to "execute" that operating plan. *Id.* at III-C-87. However, this is accomplished only by creating hypothetical new trains to move hypothetical blocks of cars beyond the on-SARR points. This means there is no way to tie the SFRR's internal operation of merchandise trains to CSXT's operation of the trains carrying the same cars to and from the on-SARR and off-SARR points.<sup>32</sup> CSXT implicitly acknowledges this by focusing on the average train speeds generated by its RTC simulation, rather than transit times. CSXT Reply at III-B-35. CSXT did not develop SFRR train transit times that can be compared with the real-world CSXT trains that carry SFRR traffic between the same points. CSXT did not present any comparative transit times because under its operating plan there are no SFRR trains that are

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<sup>32</sup> About 94 percent of the SFRR's merchandise traffic is cross-over traffic, and nearly 64 percent is overhead traffic. See SECI Opening at III-C-2 (Table III-C-1).

comparable to real-world CSXT trains. The SFRR's ability to "execute" CSXT's operating plan is irrelevant in the absence of any direct link between CSXT's hypothetical trains and the real-world CSXT trains carrying SFRR traffic.

SECI's operating plan, in contrast, assumes a direct link between real-world CSXT trains and the SFRR's trains (regardless of train type) because the SFRR operates the same trains on its system that it receives from CSXT (or another carrier) at the on-SARR point. SECI's operating plan enables a comparison of real-world average CSXT train transit times with average transit times for comparable SFRR trains. SECI's operating plan thus can be used to determine whether the SFRR meets its customer's transportation requirements from initial origin to final destination. CSXT's cannot.

At various points in Parts III-B and III-C of its Reply Narrative, CSXT criticizes specific train, track and operating inputs that SECI made into the RTC Model in conducting its simulation of the SFRR's peak-period operations. SECI responds to these criticisms below, and corrects the inputs, where necessary, for purposes of re-running the RTC Model on Rebuttal. The results of the Rebuttal RTC simulation are provided after the input discussion.

**a. Peak Train List for the RTC Model**

As described in Part III-A-2 above, SECI has revised the SFRR's coal traffic group to take into account changes in forecast coal volumes and to eliminate potential "external reroutes" of some coal traffic that in the real world does not (or is not expected to) move over any of the CSXT lines replicated by the

SFRR system. The revisions affect the SFRR coal trains that move in the peak year (2018) and thus in the 14-day peak period used for the RTC Model simulation. In addition, several trains that were improperly included in the RTC train list used for the Opening simulation were removed from the Rebuttal RTC train list.

The net result of the changes is to eliminate a total of nine coal trains from the RTC modeling period train list (five loaded trains and four corresponding empty trains) and to change the on-SARR and/or off-SARR point for several coal trains that remain in the train list. The revised peak-period trains that have been input into the RTC Model for purposes of the Rebuttal simulation are shown in Rebuttal Exhibit III-C-1.

**b. Track Inputs to the RTC Model**

CSXT alleges that SECI's operating experts made various track-related errors when inputting the SFRR system into the RTC Model. These include track geometry coding errors failure to input signals, failure to input railroad grade crossings, and failure to input road grade crossings.

Track geometry coding errors. The errors alleged by CSXT include inaccurate speed limits, track direction and grade inaccuracies, inclusion of a double-track line over the James River at Richmond, VA where there is no crossing, and coding of interchange track connections in a manner inconsistent with SECI's track or "stick" diagrams for the SFRR. CSXT Reply at III-B-28 and III-C38-39. SECI's RTC expert, Walter Schuchmann, has reviewed the CSXT

workpapers referenced on page III-B-28 and has corrected the speed, track direction and grade inaccuracies where appropriate. The track input into the RTC Model where the SFRR crosses the James River has also been corrected to show one main track at this location (the single-track bridge over the James is included in the SFRR construction costs). SECI's experts have removed the second track (weye) connection from the RTC Model at several interchange locations where it is not needed, but retained the second connection at the following locations due to interchange traffic volume: Amqui, TN, Jacksonville, FL (CSXT interchange), Rocky Mount, NC, Alexandria Jct., MD and Cumberland, MD. The added connections are shown in Rebuttal Exhibit III-B-2 and their cost has been included in the SFRR's revised construction costs presented in Part III-F below.<sup>33</sup>

Signals. CSXT notes that although the SFRR main lines are equipped with Centralized Traffic Control with wayside signals, SECI did not input signals into the RTC Model.<sup>34</sup> CSXT claims that this means the RTC Model simulates train movements as if there were no spaces between trains. CSXT Reply at III-B-26, III-C-37-38. This is incorrect. The track input into the RTC model

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<sup>33</sup> A list of the track geometry (including track configuration) and coding changes made for the Rebuttal RTC simulation is included in Rebuttal e-workpaper "RTC Infrastructure.doc."

<sup>34</sup> At page III-B-16 of its Opening Narrative SECI erroneously stated that the Robinson Run branch is equipped with CTC. This is incorrect; the SFRR-owned portion of this branch between Rivesville (Catawba Jct.) and Haywood/Lumberport, WV is not CTC/ signal-equipped. See Op. e-workpaper "SFRR C&S spreadsheet.xls." The Opening RTC Model simulation confirmed that CTC was not needed on this line. In its configuration and RTC Model simulation, CSXT unnecessarily included CTC and signals on the entire Robinson Run Branch.

has frequent nodes, which are points where the track or operating characteristics change. The model will not allow a train to proceed past a node until the link (track) between that node and the next node is clear, and any potential conflict with a train moving in the opposite direction is resolved. Thus, signals are not essential for a proper RTC simulation.

The RTC Model has been used to simulate SARR operations in several other rate cases. In some cases (*e.g.*, *WFA/Basin*) signals were included; in others (*e.g.*, *AEP Texas* and *Otter Tail*) signals were not included. The Board accepted the RTC results in all three cases. Moreover, CSXT itself has performed simulations using the RTC Model both with and without signals. In discovery, CSXT provided copies of 67 cases involving simulations using the RTC Model. 48 cases involved the I-95 corridor, which has CTC with signals; 24 of the 48 cases included signals and 24 did not. The other 19 cases involved the I-26 and Coal River corridors; 5 of these cases included signals and 14 did not. Nevertheless, because of the larger number of nodes in SECI's Rebuttal simulation (due to factors such as inputting railroad and road at-grade crossings as discussed below), and to minimize at least this area of controversy between the parties, SECI's experts have included signals for the SFRR lines that are equipped with CTC in its Rebuttal RTC simulation.

Railroad grade crossings. In its Reply Narrative CSXT states that there are 36 locations where a SFRR line crosses a line of another railroad (including CSXT) at grade, and notes that SECI did not incorporate any of them

into the RTC Model. *Id.* at III-B-28, III-C-35-36.<sup>35</sup> SECI acknowledges that railroad at-grade crossings should have been included. Accordingly, SECI has input the same 21 crossings into the Model for purposes of its Rebuttal simulation that CSXT input into its Reply simulation. It also coded into the Model the same 159 foreign train movements at these crossings that CSXT did (see CSXT Reply at III-B-32-33 and Reply e-workpaper “CSX Foreign RR Crossing Volumes.xls”).

Road grade crossings. CSXT also asserts that SECI improperly failed to include the at-grade vehicle road crossings that exist along the CSXT lines replicated by the SFRR. CSXT Reply at III-B-28, III-C-37. In prior SAC rate cases where the RTC Model has been used (by both complainants and defendants), road grade crossings were not input into the Model and neither the other party nor the Board took issue with this. However, SECI notes that most of the RTC simulation cases produced by CSXT in discovery include grade crossings, and in order to avoid unnecessary disputes between the parties SECI’s operating experts have concluded that the 1,025 vehicle grade crossings identified by CSXT should be coded into the Model for purposes of the Rebuttal simulation. SECI’s experts also use the same simplifying assumption used by CSXT in its

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<sup>35</sup> In its own RTC Model simulation, CSXT actually input 21 railroad grade crossings, not all 36 crossings shown in the table on p. III-C-36 of the Reply Narrative. This is confirmed by examination of the RTC network as documented in the RTC file “SFRR\_CSXT\_REPLY\_OP\_PLAN,” and as shown in “RTC Network Diagram – CSX Reply” included with CSXT’s Reply e- workpapers. CSXT also input 159 foreign train movements at these crossings, not 193 as stated at p. III-B-33 of the Reply Narrative. This is documented in the RTC file “SFRR\_CSXT\_REPLY\_OP\_PLAN.TRAIN” included with CSXT’s Reply e- workpapers.

own RTC Model simulation of the SFRR's operations, namely, assignment of a 20-minute maximum train occupancy time at all crossings. See Reply e-workpaper "Vehicle Road Crossing Documentation.xls."

**c. Operating Inputs to the RTC Model**

CSXT takes issue with a number of SECI's operating inputs into the RTC Model. These operating inputs are summarized and described at SECI Opening III-C-25-48. Each of CSXT's criticisms is discussed below.

**i. Road Locomotive Consists**

CSXT does not directly take issue with SECI's road locomotive consists, but as discussed above it does criticize their placement in the train for RTC modeling purposes. SECI has responded to this criticism in Part III-C-1-f above. The "standard" road locomotive consist for a train that does not require more than three locomotives is three AC4400 locomotives in a 2/1 DP configuration. When additional locomotives (up to a maximum of five) are required, they are placed in the train according to the SFRR's Locomotive Placement Rules (although these rules are irrelevant for RTC purposes).

CSXT takes issue with SECI's "assumption that trains interchanged from CSXT to SFRR will, in all instances, have locomotives aligned in the "1/1 [*sic*] configuration preferred by SECI" and that the SFRR would "be responsible for the time and cost required to shift the power into its preferred configuration at interchanges for received traffic." CSXT Reply at III-C-79. Although CSXT does



not impose any reconfiguration costs on the SFRR (*id.*), its statements reveal a fundamental misunderstanding of the SFRR's operations at interchange points.

The SFRR operates trains exactly as it receives them at interchange points, including the locomotive consists (and their placement in the train). However, while CSXT's train movement records show the number of locomotives on the train at the interchange point, and their total horsepower, they do not show the unit type or how the locomotives are placed in the train. Since it was impossible to tell what locomotives were on the trains, or where they were placed in the train, SECI's operating experts had to use a simplifying assumption for purposes of the RTC Model simulation. They assumed the trains had AC4400 locomotives sufficient to equal (or slightly exceed) the total horsepower shown in CSXT's train movement data (with a maximum of five locomotives per train), and that they were arranged in a DP configuration since CSXT uses distributed power on many trains in the same corridors. Again, these reasonable assumptions were made only for purposes of the RTC simulation, and SECI notes that CSXT used comparable assumptions for purposes of its own RTC simulation.

**ii. Train Size and Weight**

CSXT's criticisms of the train sizes and weights used in SECI's RTC Model simulation are discussed in Part III-B-1-f above. Coal train sizes are the same as the comparable CSXT coal trains that moved in the base year; new or "growth" trains were added (with similar sizes) to accommodate forecast coal traffic growth during the ten-year DCF period. SECI has corrected coal train

weights for base-year trains to add the tare weight of the cars, which was inadvertently omitted from those trains (but not growth trains) in the Opening RTC simulation.

CSXT asserts that SECI's coal train lengths ignored "real world" physical factors at certain coal origins and destinations that restrict the length of unit trains that can be operated to/from these points. CSXT Reply at III-C-32. However, SECI has eliminated this issue by correcting the lengths of the SFRR's coal trains for purposes of its rebuttal RTC simulation to match the loaded and empty cars per train from CSXTs Reply e-workpaper "Breakdown\_Load\_Empty\_Trains.xls."

Sizes and weights for non-coal trains were based on the sizes and weights of the corresponding CSXT trains, whether received at interchange points or locally-originated. Cars were added to merchandise trains to accommodate growth during the DCF period up to the maximum number of cars reported in the CSXT train/car movement data for each specific train type, subject to a maximum of 150 cars,<sup>36</sup> before separate growth trains were added.

### **iii     Helpers**

SECI's operating plan included two helper districts, the Cowan helper district in Tennessee and the Sand Patch helper district in Pennsylvania. Two-unit helper consists are added to trains requiring assistance in each district.

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<sup>36</sup> The CSXT train event data indicated that in the base year CSXT moved some non-coal trains over lines replicated by the SFRR that exceeded 150 cars in length.

In the Opening RTC simulation 20 minutes of dwell time were allotted to add helper locomotives to a train and 15 minutes were allotted to remove helpers from a train. *See* SECI Opening at III-C-14-15 and 28-29. CSXT accepts the Cowan and Sand patch helper districts, the two-unit helper consists, and the time allotments for adding and removing helpers.<sup>37</sup> However, it asserts that the SECI's RTC simulation actually reflects two additional helper districts, one for loaded coal trains operating north and south from Loveridge Mine in West Virginia and the other for loaded coal trains operating between Brunswick and Alexandria Jct., MD. CSXT Reply at III-C-80.

In fact, as explained in Part III-B-2-d above, SECI did not include helper districts near Loveridge Mine or between Brunswick and Alexandria Jct. Rather, its operating plan provides for the addition of a fourth road locomotive to certain trains operating north and south from Catawba Jct. (Rivesville), WV and operating between Cumberland and Alexandria Jct. The same procedure was followed in SECI's Rebuttal RTC simulation, and all coal trains originating at Loveridge Mine and operating between Cumberland/Brunswick and Alexandria Jct. were able to operate successfully without the need for a separate manned, two-unit helper consist.

**iv. Maximum Train Speeds**

CSXT accepts the maximum train speeds for each type of train reflected in SECI's operating plan, but notes that in SECI's RTC simulation empty

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<sup>37</sup> CSXT Reply at III-B-33 and III-C-80 and 96.

coal trains were limited to a maximum speed of 50 mph, rather than 60 mph as provided in SECI's operating plan. CSXT Reply at III-B-34. SECI's operating experts corrected this inadvertent error and increased the maximum speed for empty coal trains (conditions permitting) to 60 mph in their Rebuttal RTC simulation.

**v. Dwell Times at Local Origins and Destinations**

CSXT has accepted the origin and destination dwell times for the SFRR's coal customers, as described in SECI's operating plan. CSXT Reply at III-B-33. However, CSXT criticizes SECI for not allotting any dwell time at non-coal origins (or destinations). CSXT Reply at III-C-89 and 92. However, in its RTC simulation SECI's operating experts allotted time for each non-coal train to completely leave or enter the main line. It is inappropriate to allot additional time because there is no way to identify dwell times at or between locations from CSXT's car event or train movement data.

If CSXT is referring here to delivery and pickup of cars by local or yard trains, SECI accounted for these activities through its yard and local switching cost additive. This cost additive reflects the time and personnel needed for local pickups and setouts.<sup>38</sup>

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<sup>38</sup> CSXT's operating plan allots 30 minutes for a pickup or setout, and 45 minutes for both a pick-up and a setout, at intermediate points and origins served by local/yard trains. SECI's experts allotted the same times for purpose of the RTC switch-train test simulation described in Part III-C-1-b-ii above. That test simulation confirms the reasonableness of SECI's switching cost additives.

**vi. Dwell Time at Yards**

CSXT has accepted the dwell times at yards for 1,000/1,500-mile inspections and associated switching, locomotive fueling, interchange, and crew changes described in SECI's operating plan. CSXT Reply at III-C-93. However, CSXT's operating plan calls for additional yards, over and above the four inspection/fueling yards (and interchange yards) provided under SECI's operating plan, to be used for intermediate pickups and setoffs of blocks of cars. At these yards CSXT allots 30 minutes to set off or pick up cars and 45 minutes where both activities are performed. *Id.* SECI has no quarrel with CSXT's time allotments for intermediate pickups and setoffs, but as discussed previously CSXT's operating plan, with its scheme for hypothetical blocks of cars and hypothetical new trains, must be rejected by the Board – which means its proposed additional yards must also be rejected. Moreover, the time for such pickups and setoffs is accounted for by SECI's I&I switching and yard/local switching cost additives.

**vii. Time Required to Interchange Trains With Other Railroads**

CSXT accepts SECI's allotment of 30 minutes to interchange trains at the SFRR's interchange points with CSXT and other railroads. CSXT Reply at III-C-94-95. However, CSXT goes on to assert that because some SFRR/CSXT interchange points are located a considerable distance from the nearest CSXT crew reporting point, the main line could be blocked for more than 30 minutes depending on when the CSXT crew arrives to pick up a train (*id.*). This concern is

purely hypothetical, and in any event SECI provided separate interchange tracks off the main line at every interchange point. Depending on traffic volume, up to three interchange tracks were provided, as shown in Rebuttal exhibit III-B-2. This adequately addresses CSXT's concern.<sup>39</sup>

**viii. Crew-Change Locations/Times**

CSXT agrees with SECI's allotment of 15 minutes to change crews at crew-change points where no other activity (such as interchange) is performed. CSXT Reply at III-C-96. However, CSXT disagrees with SECI's proposed crew bases (home terminals) and crew districts, noting that they are different from the real-world CSXT home terminals and crew districts. CSXT also argues that SECI's crew districts and crew requirements are "untethered" from the work the crews would need to perform. *Id.* CSXT goes on to develop new SFRR crew districts based on its own, unacceptable operating plan for the SFRR.

There is nothing unusual about the fact that the SFRR's home terminals and crew districts are different from CSXT's. CSXT's crew terminals and assignments are a function of its traffic flows, which are different from the SFRR's, as well as collective bargaining agreements that in many cases reflect the

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<sup>39</sup> CSXT asserts that it addressed this concern "by providing sufficient interchange tracks and/or yard facilities to give the SFRR the ability to run around the train, to avoid extended blockage of the main line and to perform the minimum switching necessary to create blocks as required by the SFRR's customers." *Id.* at 95-96. It is unclear where (or how many) such additional tracks have been provided, and the need for them is contradicted by CSXT's acceptance of 30 minutes of interchange time. The need for blocking activity is eliminated by the required rejection of CSXT's operating plan.

crew districts of predecessor railroads that merged to form the present-day CSXT. A SARR's operating plan and crew assignments are designed to accommodate its specific traffic group and flows, and a SARR is not bound by existing, real-world collective bargaining agreements with the incumbent's labor unions.<sup>40</sup>

In support of its thesis that the SFRR's crew districts under SECI's operating plan are unrealistic, CSXT argues that because the same SFRR trains enter and/or exit the SFRR at different locations on different days, crews would be required to go on-duty and off-duty at different locations on different days, "making it virtually impossible for CSXT (or connecting carriers) to follow a coherent crew plan and increasing crew costs. CSXT Reply at III-C-27-28. This argument erroneously assumes that the SFRR's crews are trained and assigned to work specific trains, rather than in a specific crew district. No railroad would rationally operate in this manner.

CSXT uses the daily operation of a merchandise train, Train Q410 operating between Waycross, GA and Alexandria Jct., MD, as an example of the alleged problems with a train entering and exiting the SFRR system at different locations on different days. CSXT incorrectly assumes that this train must operate between the same two points on a daily basis for SECI's crew districts to work. In fact, SECI's crew districts are designed to handle the trains that move over the SFRR system, regardless of the day-to-day consistency of these trains. If Train

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<sup>40</sup> As the Board has recognized, a SARR does not need to be unionized at all. *TMPA* at 687; *PSCo/Xcel* at 651.

Q410 enters the system at one location on one day and a different location on another day, SECI's crewing plan accommodates the train regardless of where it enters or leaves the system and an appropriate number of crews have been assigned in each crew district to move the train. In other words, all trains are handled in each crew district by crews trained for that district, not crews trained for a specific train ID, as CSXT would have the Board believe. For example, a crew operating between Charleston and Pembroke or between Pembroke and Richmond would handle any train moving between those points. If a Q410 train comes on the SFRR system at Charleston and goes off the system at Richmond it would be moved by two crews trained for those two distinct crew districts. If a different Q410 train enters the system at Pembroke and exits at Richmond, it would be handled by one crew trained for that district. In short, the fact that different Q410 trains enter and leave the system at varying points has no effect on the SFRR's crew districts or the assignment of crews to SFRR trains.

Notwithstanding the smoke CSXT throws at the subject of crew districts, a comparison of SECI's crew districts shown on pages III-C-40-42 of its Opening Narrative with CSXT's proposed crew districts shown in its Reply e-workpaper for Part III-D-1, "Train Statistics and T&E Crews.xlsx," tab "Crew Districts," shows that for the most part SECI's and CSXT's proposed crew districts are the same.

One final note on this subject: CSXT correctly points out that under SECI's operating plan an hour is allotted for crew preparation/taxi time, but in



SECI's Opening RTC Model simulation crew preparation/taxi time was coded in as only 30 minutes (which increases the on-duty time for a crew to complete its tour of duty). CSXT Reply at III-C-39. SECI's experts have corrected this error and crew preparation/taxi time has been coded into the Model as one hour for purposes of the Rebuttal RTC simulation.

**ix. Time for a Train to Reverse Direction**

The SFRR's configuration and traffic flows require that certain trains must reverse direction at seven locations. SECI's operating experts allotted 30 minutes for this activity. CSXT does not address this time allotment; its silence indicates acceptance of the number.

**x. Track Inspections and Maintenance Windows**

CSXT has accepted SECI's position that no delay time should be allocated to account for scheduled track inspections or maintenance windows. CSXT Reply at III-C-96.

**xi. Time for Random Outages**

CSXT has also accepted the random outages and the time allotted for Each outage event that SECI's operating experts input into the RTC Model during the peak simulation period. *Id.*

**xii. Time for Delay to Trains at Grade Crossings**

CSXT notes that SECI did not code railroad grade crossings or road grade crossings into the RTC Model, and that SECI's Opening simulation did not account for delays at such crossings. As discussed in Part III-C-2-b above, for

purposes of its Rebuttal RTC simulation SECI has accepted the railroad and road grade crossing delays posited by CSXT and has coded them into the Model.

**d. Results of the RTC Simulation**

After revising the inputs to the RTC Model as discussed in the preceding sections, SECI Witness Walter Schuchmann re-ran the Model.<sup>41</sup> The Model ran to a successful conclusion. The output from the revised simulation (including elapsed train running times over each SFRR line segment and train transit times) was provided to SECI witness Crowley for development of SFRR operating statistics used to calculate the SFRR's road locomotive and freight car requirements and other annual operating expenses.

A revised schematic diagram of the SFRR's tracks as they appear in the Rebuttal version of the Model is included as Rebuttal Exhibit III-C-2. The electronic files containing the Rebuttal Model runs, output and case files are included in Rebuttal Part III-C e-workpaper folder "RTC Revised."

The Rebuttal RTC simulation resulted in SFRR train transit times that are slightly different from those presented by SECI on Opening. The revised transit times for the same 30 randomly-selected trains (and subset of 14 trains that operate more than 100 miles on the SFRR system) that were presented on Opening

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<sup>41</sup> For its Opening simulation Mr. Schuchmann used Version RTC 2.7 L52B of the RTC Model. For the rebuttal simulation Mr. Schuchmann used a more recent version provided by Berkeley Simulation Software, Version RTC 2.7 L54O. The change was made because Mr. Schuchmann re-installed the older version on a newer computer with Windows 7 after SECI's Opening Evidence was filed, and encountered difficulty getting the program to run until Berkeley Simulation Software provided and installed the more recent version.

are shown in Rebuttal Exhibit III-C-3, which is a revised version of SECI's Opening Exhibit III-C-4. Rebuttal Exhibit III-C-3 also compares the SFRR's transit times for these trains with CSXT's transit times for the comparable trains that operated in the peak period of the base year. As can be seen, the results confirm that the SFRR operates trains during the peak period of its peak traffic year at transit times that are comparable to CSXT's transit times in the same period of the base year.

CSXT is critical of SECI's analysis of the RTC simulation results, which was based on a comparison of train transit times produced from the RTC simulation to CSXT's actual transit times for the same trains. Specifically, CSXT claims that "SECI's attempt to compare those times with what it claims is a "random sample" of only 30 CSXT trains (out of the more than 45,000 trains in SECI's CSXT 2008 train event file) is, in a word, farcical."<sup>42</sup> Notwithstanding CSXT's hyperbole, CSXT did not present any analysis to demonstrate that SECI's sample results are not statistically significant and representative of the universe evaluated.

SECI explained on Opening that because the SFRR traffic group was so heavily weighted to carload general freight and intermodal movements (as opposed to unit train coal movements), and because the CSXT-produced data was incomplete, SECI had to modify the traditional approach of comparing RTC-

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<sup>42</sup> CSXT Reply at III-C-86.

generated peak week times with actual CSXT times for all or most trains moving between a limited number of O/D pairs.<sup>43</sup> SECI's approach was based on a statistically valid random sample of 30 trains included in its RTC simulation.

Contrary to CSXT's claim, the RTC Model does not produce simulated transit times for the more than 45,000 trains carrying SFRR traffic that operated in the base year, but only for trains that were operated in the peak week. The RTC simulation developed by SECI's experts on Opening produced results for just over 1,000 peak-week trains. Based on the sample population of just over 1,000 trains, SECI randomly selected 30 trains to include in the detailed transit time evaluation.<sup>44</sup> CSXT's claim that an evaluation of a random sample of trains produced "farcical" results is an attempt to deflect the Board's attention away from a valid statistical approach to evaluating a universe of data. In simple terms, the purpose of a statistical sample is to allow the user to draw conclusions about the universe of data being evaluated. CSXT did not address the validity of SECI's sample results, but rather chose to mount a rhetorical attack an analysis they could not respond to in any other manner.

As noted earlier in this Part III-C, CSXT did not present comparative SFRR and CSXT train transit times in its Reply evidence. Rather, it presented only a comparison of average trains speeds for various categories of traffic as

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<sup>43</sup> See SECI Opening at III-C-48 to III-C-50.

<sup>44</sup> SECI explained in detail how this random sample was developed at pp. III-C-51 n. 51 of its Opening Narrative.

between SECI's Opening RTC simulation and CSXT's Reply RTC simulation. CSXT Reply at II-B-35. SECI questions the relevance of this comparison, as it does not show whether the SFRR meets customer service requirements under either party's operating plan. However, the SFRR's average train speeds can be developed from the statistics shown in "Dispatch Statistics - SECI Rebuttal SFRR 3-29A.pdf" which is part of the Rebuttal e-workpaper files documenting SECI's Rebuttal RTC simulation.

**3. Other**

**a. Rerouted Traffic**

In its Opening evidence SECI described internal reroutes in two corridors, Nashville-Manchester and Waycross-Jessup. SECI Opening at III-C-52-57. CSXT has accepted these two reroutes. CSXT Reply at III-A-28.

CSXT also contends that SECI included several external reroutes in designing the SFRR's traffic group, but failed to identify them in its Opening evidence. SECI responds to this contention in Part III-A above. Suffice it to say here that to the extent changes in the SFRR's coal traffic movements and volumes have been made that affect the peak-period train movements, the changes have been reflected in SECI's Rebuttal simulation of the SFRR's operations using the RTC Model.

**b. Fueling of Locomotives**

CSXT generally accepts the SFRR's fueling plan and procedures, as summarized at pp. III-C-37-38 and 57 of the Opening Narrative, except that CSXT

proposes that separate trucks be used for locomotive fueling and for locomotive servicing. CSXT Reply at III-C-104. Locomotive fueling and servicing are performed by contractors, so it is up to the contractor to decide what kinds of trucks to use to accomplish these tasks.

On page III-C-105 of its Reply Narrative, CSXT quotes, and disputes, SECI Witness Reistrup's statement that "it is likely that trains received in interchange from CSXT or another railroad will likely have locomotives with full fuel tanks and that do not require 92-day inspection while on the SFRR." However, CSXT quotes only part of Mr. Reistrup's statement. Mr. Reistrup also stated that, to be conservative, coal trains that move through one of the SFRR's four inspection/fueling yards, and non-coal trains that move at least 500 miles on the SFRR, will receive locomotive fueling and inspection (if needed) while on the SFRR. SECI Opening at III-C-38.

**c. Car Inspections**

CSXT does not quarrel with the inspection procedures described in SECI's operating plan (*see* SECI Opening at III-C-58-59). It also accepts that car inspections and car repairs would be performed at each of the four inspection/fueling yards provided for in SECI's operating plan.<sup>45</sup> However, CSXT proposes to add equipment inspectors at the new "major merchandise yards" called for under its operating plan, which more than doubles the number of inspection

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<sup>45</sup> CSXT Reply at III-C-106. CSXT proposes to relocate the Folkston, GA yard to Callahan, FL, but the relocation is unnecessary and Folkston is closer to the junctions between the SFRR's East and West Divisions.

personnel required. CSXT Reply at III-C-105. CSXT has not explained why additional equipment inspectors are required at any location, or why the SFRR's trains requiring 1,000-mile or 1,500-mile inspections cannot be inspected at one or more of the four inspection/fueling yards provided by SECI. In any event, because CSXT's operating plan must be rejected, its new car inspection proposal must also be rejected.

At page III-C-106 of its Reply Narrative CSXT states that the car inspection procedures that would be used on the SFRR under its operating plan are detailed in Reply e-workpapers "CSXT Reply Train Inspection Package.xls" and "Circular \_ot\_55\_j.pdf." However, those workpapers merely cite FRA and AAR requirements for car inspections, and do not detail how these procedures would be carried out. Given CSXT's silence as to SECI's proposed inspection procedures (which are similar to the procedures accepted by the Board in other SAC cases including *WFA/Basin*), SECI's procedures should be accepted.

**d. Train Control and Communications**

**i. CTC/Communications System**

CSXT accepts SECI's proposed CTC and communications system. CSXT Reply at III-C-106. However, it notes that SECI did not code the signals that are part of a CTC system into the RTC Model for purposes of its Opening simulation the SFRR's operations (*id.*). As discussed in Part III-C-2-b above, SECI has input the appropriate signals into the RTC Model for purposes of the Rebuttal simulation.

**ii. Dispatching Districts**

SECI's operating plan provides for six dispatching districts, with each district manned by dispatchers around the clock. SECI Opening at 61-62. CSXT responds by asserting that the SFRR should have eleven dispatching districts that match the 11 "major general freight crew districts" proposed in its new operating plan. CSXT Reply at III-C-110.

CSXT has provided no explanation of why it increased the SFRR's dispatching district from six to 11, or why dispatching districts need to match crew districts (with rare exceptions they do not match on real-world railroads). In any event, since CSXT's operating plan must be rejected, its dispatching districts must also be rejected.

**iii. PTC Implementation**

On Opening, SECI's operating experts acknowledged that the SFRR will be subject to the positive train control ("PTC") requirements of the Rail Safety Improvement Act of 2008. However, given the unsettled status of PTC technology and uncertainty as to whether the current compliance date (December 31, 2015) will hold, SECI's expert did not develop any costs for PTC compliance. SECI Opening at III-C-62-63.

CSXT asserts that "SECI must be required to account for the capital and operating costs of PTC across those portions of its [*sic*] system that handle PIH/TIH traffic. CSXT Reply at III-C-107. CSXT goes on to state that its operating experts included the costs of installing a PTC system during



construction of the SFRR system, with the installation occurring in 2014. CSXT's costs included "way" (signal/communications), back office costs, and locomotive costs totaling \$52.9 million in 2009 dollars. *Id.* at 108-110.

There is no way to tell with any degree of certainty whether CSXT's estimated PTC compliance costs for the SFRR are reasonable at this early stage (about a month before any railroad's PTC compliance plan has even been submitted to the FRA). The Board recently rejected a Class I railroad's attempt to include projected costs of compliance with the new PTC federal mandates in a "simplified" rate case involving the Three-Benchmark standard. STB Docket No. 42114, *US Magnesium, L.L.C. v. Union Pacific Railroad Co.* (STB served January 28, 2010). In rejecting PTC compliance costs the Board noted that "there is a great deal of uncertainty surrounding PTC investment, and UP has not demonstrated the precise amounts that could be reasonably ascribed to USM's traffic" (*id.* at 17). The Board went on to hold:

While we understand that the costs of PTC might be significant and that carriers might need to recover the additional costs from their future, the adjustment advocated by UP cannot be justified here. . . . UP has not demonstrated here that PTC investments are sufficiently defined such that UP can quantify its costs or fairly attribute those costs to USM's traffic.

*Id.* at 2. Given this continuing uncertainty, the Board should similarly reject CSXT's attempt to assign PTC compliance costs that will not be incurred by the SFRR for another four years.

e. **Miscellaneous Aspects of the Operating Plan**

Other elements of the SFRR operating plan, including operating personnel requirements, are discussed in Part III-D below.

**III-D Operating  
Expenses**

### **III. D. OPERATING EXPENSES**

CSXT begins its discussion of the SFRR's annual operating expenses by repeating its vituperative attacks on the SFRR's "train" (operating) plan and its alleged failure to provide for intermediate, local and yard switching of merchandise cars; SECI's use of cost additives for I&I switching, yard/local switching and intermodal lift and ramp costs; and SECI's provision of a manifest line-haul credit for the non-SFRR (*i.e.* CSXT) cars moved on SFRR merchandise trains.

In Part III-C, SECI has responded to CSXT's criticism of its use of cost surrogates for switching operations and intermodal lift/ramp costs. It demonstrated, by means of a test of several peak-period movements of merchandise trains that involved switching operations using the RTC Model, that the switching cost surrogates are conservative and almost certainly overstate the cost of actually performing the underlying operations as measured by the time required to perform them.<sup>1</sup> It also demonstrated that CSXT's development of brand-new switching operations and related new yard facilities in its operating plan for the SFRR bears no relationship to reality because these operations assume that the cars on the SFRR's merchandise trains are completely divorced from the CSXT trains that actually carried the SFRR's traffic over the replicated lines during the base year, and move in hypothetical blocks in new, hypothetical trains.

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<sup>1</sup> With respect to CSXT's allegation that SECI Witness Crowley "guessed" at the number of I&I switches to be performed annually (CSXT Reply at III-D-5), SECI has demonstrated that Mr. Crowley's approach was reasonable based on continuing problems with the car/train event data produced by CSXT in discovery.

With respect to intermodal lift and ramp costs, CSXT ultimately accepts SECI's concept although it proposes to increase the related costs by using a different average cost per unit than the cost per unit from the CSXT/CSXI contract that SECI used.<sup>2</sup> SECI responds to CSXT's cost calculations in Part III-D-9 below.

Notwithstanding CSXT's disparagement of SECI's use of a manifest line-haul credit to compensate the SFRR for moving CSXT cars on its trains, CSXT ultimately accepts that concept as well for purposes of this case. *See* SECI Opening at III-C-17-18 (fn. 14 and 15). Accordingly, CSXT includes a manifest line-haul credit as an offset to the SFRR's annual operating expenses, although it reduces the amount of the credit by removing empty cars from the calculation. SECI also responds to CSXT's calculation of the line-haul credit amount in Part III-D-9.

A comparison of the parties' calculations of the SFRR's annual operating expenses for its first year of operations is shown in Table III-D-1 on the next page.

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<sup>2</sup> *See* CSXT Reply at III-D-11-12. CSXT also asserted that the SFRR should bear the cost of constructing intermodal terminals or yard facilities to handle originated/terminated intermodal traffic. SECI has accepted this, and includes the necessary facilities and construction costs in its Rebuttal road property investment costs described in Part III-F below.

<b>REBUTTAL TABLE III-D-1</b> <b>SFRR 2009 OPERATING EXPENSES</b> <b>(\$ Millions)</b>			
	<b>SECI Opening</b>	<b>CSXT Reply</b>	<b>SECI Rebuttal</b>
Locomotive Lease <sup>1'</sup>	\$ 0.3	\$ 1.3	\$ 0.4
Locomotive Maintenance	\$ 23.2	\$ 27.0	\$ 23.0
Locomotive Operations	\$ 84.0	\$ 84.6	\$ 80.0
Railcar Lease	\$ 33.6	\$ 37.7	\$ 38.5
Materials & Supply Operating	\$ 1.1	\$ 4.4	\$ 1.2
Train and Engine Personnel	\$ 55.0	\$ 103.5	\$ 59.8
Operating Managers	\$ 20.3	\$ 55.3	\$ 21.5
General & Administrative	\$ 19.7	\$ 46.7	\$ 22.4
Loss & Damage	\$ 2.2	\$ 1.7	\$ 2.2
Ad Valorem Tax	\$ 14.1	\$ 22.4	\$ 14.1
Maintenance-of-Way	\$ 53.8	\$ 100.8	\$ 54.3
Trackage Rights	\$ 7.2	\$ 7.2	\$ 7.2
Intermodal Lift and Ramp	\$ 11.5	\$ 20.2	\$ 15.2
Switch Expense Additive	\$ 16.7	\$ 0.0	\$ 15.8
Insurance	\$ 5.0	\$ 31.7	\$ 9.8
Startup and Training	\$ 24.9	\$ 53.6	\$ 28.7
Manifest Line Haul Credit	\$(108.6)	\$ (73.8)	\$ (105.0)
<b>Total<sup>2</sup></b>	<b>\$ 263.9</b>	<b>\$ 524.3</b>	<b>\$ 289.0</b>
<sup>1'</sup> Locomotive lease costs apply only to the SFRR's switching locomotives. The SFRR purchases its road locomotives and the purchase cost is capitalized in the DCF Model.			
<sup>2'</sup> Total differs slightly from the sum of the individual items due to rounding.			

Of the \$235.3 million total remaining difference in the parties' calculations of annual operating expenses the bulk (\$148.3 million) is accounted for by four categories: Train & Engine ('T&E') Personnel, Maintenance-of-Way, General & Administrative, and Operating Managers. Most of the difference in these items results from CSXT's more complex operating plan for the SFRR, which

involves more locomotives, more crews, more yards, and more switching activity than were provided in SECI's operating plan. As discussed in Part III-C-1 above, CSXT's operating plan must be rejected by the Board because it does not meet customer service requirements and because it does not provide an appropriate basis for determining the SFRR's annual operating expenses. Accordingly, CSXT's proposed new yards and yard switching operations (which drive most of CSXT's proposed increase in operating and other personnel) must also be rejected. SECI has accounted for the cost of the relevant switching operations in its I&I and yard/local switching cost additives; the associated personnel costs would be double-counted if CSXT's increased personnel counts were to be accepted.

In the sections below SFRR responds to CSXT's Reply Evidence as to each category of expense shown in Rebuttal Table III-D-1.

**1. Locomotives**

CSXT accepts SECI's designation of GE AC4400 locomotives for road service and EMD SW1500 locomotives for yard switching and work-train service. CSXT also accepts that the SFRR purchases its road locomotives (with the cost capitalized in the DCF model) and leases its switching locomotives. CSXT Reply at III-D-16-18. However, it posits additional road and switch locomotive requirements.

**a. Purchase/Lease Costs**

With respect to road locomotives, CSXI asserts that the SFRR must purchase a newer GE model (the ES4400AC) rather than the AC4400CW model

designated by SECI because GE discontinued manufacturing the AC4400CW prior to 2008, when most of the locomotives would be purchased. SECI accepts that AC4400CW locomotives could not be purchased new in 2008, although there undoubtedly was a resale market for this model. This is evidenced by the June 2008 issue of *Railway Age*, which indicates, at page 43, that GE4400CW locomotives are available in the marketplace for sale or lease. This issue of *Railway Age* was relied on by SECI on Opening and accepted by CSXT on Reply for determining the lease prices for many of the car types utilized by the SFRR. This article notes a sales price of \$1.8 million per unit which is slightly less than the \$1.83 million per unit relied on by SECI in its Opening Evidence. SECI continues to use the \$1.83 million purchase price per unit on Rebuttal.

On Opening, SECI calculated that the SFRR requires a total of 192 road locomotives in the peak year (which translates to 164 locomotives in 2009 which is the SFRR's first year of operations). This calculation was based on the transit-time output from its RTC Model simulation, the locomotive requirements for each train, the total number of trains to be moved in 2009, and use of a spare margin and peaking factor in accordance with established Board precedent. SECI Opening at III-C-11-13.<sup>3</sup> CSXT accepts SECI's proposed spare margin (CSXT Reply at III-D-18), but uses a different procedure for calculating the total number of road locomotives required based on a "snapshot" *hour* of the peak week's trains

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<sup>3</sup> Based on the results of its Rebuttal RTC Model simulation, and using the same procedure it used on Opening, SECI has determined that the SFRR actually requires 191 road locomotives in the peak year and 161 such locomotives in 2009.



from CSXT's RTC Model simulation and counting the total number of road locomotives powering and helping trains (*id.*) CSXT's road locomotive count of 171 locomotives in 2009 must be rejected because (i) its operating plan on which its RTC simulation is based must be rejected, and (ii) its methodology is inconsistent with the Board-approved methodology for ascertaining a SARR's road locomotive requirements.

CSXT's calculation of locomotive requirements based on the requirements for the peak hour in the peak week of the peak year does not reflect the traffic mix the SFRR can expect to face on an ongoing basis. Using peak period statistics to represent annual statistics has been rejected by the STB on numerous occasions. For example, in *WFA/Basin*, the Board rejected the increase of a peak week's statistics to the entire year stating:

WFA's approach risks substantially over- or understating the annual operating statistics if the peak-week traffic mix is not representative of the annual traffic. See Otter Tail at C-2. For example, if during the peak week, the LRR were to serve a mix of traffic that is predominantly less expensive to service (e.g., the short-haul southbound PRB traffic) than the overall traffic mix throughout the year, then simply multiplying the peak week operating statistics by 366 and dividing by 7 would not accurately reflect the annual operating expenses. BNSF's approach is more precise, as it relies on the actual traffic forecast for that year. It is also the approach used by the Board in recent SAC cases.

*Id.* at 33. In this instance, CSXT's approach increases the risk substantially by using a single peak hour's requirements to calculate the SFRR locomotive requirements for the entire year. By contrast, SECI calculates locomotive

requirements in the manner mandated by the Board in *WFA/Basin*, *AEP Texas*, *Otter Tail*, and other recent proceedings. SECI calculated locomotive requirements by applying average transit times for the peak week from the RTC model to *all* trains moving over the SFRR during the base year, thereby eliminating the risk of over- or understating the annual locomotive requirements. The resulting number of locomotive units was then increased by a spare margin of 3.7 percent, which was accepted by CSXT, and again by a “peaking factor” to account for the number of locomotives required in heavy traffic periods. This is the same methodology accepted by the STB in all recent SAC proceedings. Thus, CSXT’s criticism of SECI’s methodology for calculating locomotive requirements is totally misplaced and it is CSXT’s mathematical approach that is in error.

CSXT accepts SECI’s daily lease rate and annual lease cost for SW1500 switching locomotives (\$36,433 per unit). However, it increases the number of SW1500 locomotives from eight to 36 because of the additional intermediate, local and yard switching required under its operating plan and because of work-train service requirements. CSXT Reply at III-D-16-17. SECI agrees that two additional SW1500 locomotives are needed for work-train service, but disagrees that more than eight such locomotives are needed for switching service. The additional yard switching proposed by CSXT derives from the new blocking schemes and trains posited by its operating plan, which the Board must reject for the reasons detailed in Part III-C-1 above. Thus, the total number of SW1500 locomotives required is 10, including the two additional locomotives to be

used for work-train service. The total annual lease cost for these locomotives is \$364,330 (\$36,433 x 10).

**b. Maintenance**

CSXT accepts SECI's locomotive maintenance cost per unit for both road and switching locomotives. CSXT Reply at III-D-19. CSXT notes that under the full-service maintenance agreements on which SECI's maintenance costs are based, {

} CSXT accepts the SFRR locomotive repair facilities specified by SECI, except it proposes to relocate the SFRR's major locomotive repair shop from Folkston, GA to Callahan, FL. *Id.* at III-D-19-20.

The total annual locomotive costs incurred by the SFRR are a function of the number of each locomotive type required. The revised total annual locomotive maintenance cost for the SFRR, based on the revised numbers of each locomotive type, equals \$23.0 million in 2009. See Rebuttal e-workpaper "SFRR Operating Expense\_Reb.xls."

**c. Servicing (Fuel, Sand and Lubrication)**

CSXT accepts SECI's proposal to fuel and service SFRR locomotives at four locations. However, CSXT proposes to increase SECI's servicing cost (sand and lubrication oil) by \$1.36 million annually, while positing a reduction of \$0.81 million annually in SECI's fuel cost. CSXT Reply at III-D-20-26.

**i. Sand and Lubrication**

CSXT asserts that separate servicing trucks should be utilized for fueling locomotives and for providing sand and lube oil. It also asserts that SECI failed to include the cost of the trucks. *Id.* at III-D-20. However, locomotive servicing (and fueling) is performed by contractors, who provide their own trucks. The contractors will decide what kind of trucks to use, and there is no need to add a separate cost for trucks, as the contractor's price would cover the contractor's costs including equipment costs.

CSXT also claims that SECI failed to include the cost of lube oil in developing locomotive servicing costs. *Id.* at III-D-21. CSXT's states that lube oil costs are included in the R-1 Annual Report, schedule 410, line 202, locomotive repair and maintenance and claims that CSXT's annual lube oil cost equals \$22.9 million. CSXT also claims that the lube oil costs are not included in the {

} used as the basis for SECI's calculation, and therefore are paid for by CSXT and must be included in developing cost for the SFRR. CSXT includes this amount in the calculation of locomotive servicing for use in this proceeding.

Adding the \$22.9 million in lube oil cost to the calculation of locomotive servicing increases the locomotive servicing unit cost by \$0.082 per locomotive unit mile and locomotive operating expense for the SFRR by \$2.3 million in 2009.

SECI's experts have concluded that inclusion of this cost is unwarranted for two reasons. First, CSXT has not provided any support for the claimed \$22.9 million annual amount for lube oil, merely stating that it is included

in line 202 of schedule 410.<sup>4</sup> CSXT provided no workpaper or documentation showing the development of this amount or that would allow SECI's experts to verify it.

Second, CSXT claims that lube oil costs are not included in the {  
}. That agreement states that {

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CSXT's workpapers show that CSXT included \$1,006,582 for "consumables" in the locomotive servicing costs, to include such items as ice and water for crews. SECI has not included this amount on Rebuttal. As with many of CSXT's numbers, the value is supported only by an email which purports to show train supplies expense of \$8,910,162 in 2008 for all CSXT trains and allocates \$1,006,582 to SFRR trains. CSXT provides no information as to the source of these numbers or what they represent. CSXT's Annual Report Form R-1, Schedule

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<sup>4</sup> Review of CSXT's 2008 R-1, schedule 410 shows the amount on line 202 of schedule 410, column C equals \$107.2 million, thus providing no support or verification for the amount included by CSXT.

<sup>5</sup> See CSX-SE-HC015915, { }, contained in SECI Rebuttal e-workpaper { }

410, lines 402 and 403, column (c) shows train supplies for CSXT systemwide train crews in 2009 to equal \$528,000, far less than the unsupported amount claimed by CSXT for only the SFRR crews in this case.

**ii. Locomotive Fuel**

On Opening, SECI developed fuel costs and fuel consumption rates based on CSXT's average cost per gallon of diesel fuel for 4Q2008, and its average 2008 fuel consumption rate, calculated from the monthly statements from CSXT to CSXI for 2008 per the Transportation Services Agreement ("TSA") between CSXT and CSXI. SECI Opening at III-D-6-7. CSXT uses different methodologies to calculate fuel costs and fuel consumption for the SFRR's road locomotives,<sup>6</sup> with the result being a net reduction in locomotive fuel costs compared with those posited by SECI on Opening. CSXT Reply at III-D-22-26.

On Opening, SECI included \$78.1 million for locomotive fuel expense in 2009. In comparison, on Reply, CSXT included \$77.3 million for locomotive fuel expense for the same period. While the parties appear to nearly agree on total locomotive fuel expense, the manner in which they arrived at these two numbers is vastly different. At pages III-D-22-26 of its Reply Narrative, CSXT goes to great lengths to discredit SECI's approach to developing fuel costs, and in doing so masks the key components that drive the differences in these costs.

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<sup>6</sup> CSXT accepts SECI's methodology for calculating of fuel costs and fuel consumption for SW1500 switching locomotives (CSXT Reply at III-D-25-26), but CSXT increased the total fuel cost because of its increase in the number of SFRR switch locomotives.

Rebuttal Table III-D-2 below sets forth each of the component differences in the parties cost development and makes clear that the primary difference in the parties' fuel expense is driven by the cost per gallon of fuel.

<b>REBUTTAL TABLE III-D-2 COMPARISON OF SFRR 2009 FUEL EXPENSE COMPONENTS</b>			
<b>Item</b>	<b>SECI Opening</b>	<b>CSXT Reply</b>	<b>Difference</b>
2009 Fuel Expense	\$78,095,232	\$77,283,642	\$811,590
Road locomotive unit miles	26,365,202	16,038,408	10,326,794
Helper locomotive unit miles	1,388,494	471,360	917,133
Switch locomotive unit miles	210,240	1,689,919	(1,479,679)
Gross ton-miles (000)	67,675,008	--	--
Gallons/kgtm	1.1357	--	--
Gallons consumed	76,858,506	53,215,885	23,642,621
Fuel price/gallon	\$1.008	\$1.390	(\$0.382)
Drayage cost/gallon	--	\$0.0216	(\$0.0216)
Fuel truck cost 2009	--	\$2,657.096	(\$2,657,096)
Gallons/LUM	2.915	2.924	(0.009)

CSXT sharply criticizes SECI for not using its Event Recorder Data provided in discovery and for not using traditional locomotive unit mile data as the basis for determining fuel gallons. Further, CSXT criticizes SECI for using the TSA between CSXT and CSXI for developing the price per gallon and using the TSA fuel metric { } to determine consumption for the SFRR. These criticisms are a red herring, diverting attention from the two issues that drive the difference in the locomotive fuel cost for the SFRR, i.e. the number of gallons consumed and the price per gallon paid for fuel.

On Opening, SECI calculated its number of gallons consumed based on the actual trains used to handle the SFRR traffic and the number of locomotives CSXT actually used to move those trains in the peak period. On Reply, CSXT criticized SECI's use of the actual locomotive consists on these trains, stating that in some instances SECI included 8 or 10 locomotives on trains. CSXT Reply at III-C-74. In response to CSXT's criticisms, SECI has adjusted the locomotive consists to remove use of more than five units on any given train, resulting in fewer gallons consumed.<sup>7</sup>

The second difference in the parties' cost of fuel is related to the price per gallon. CSXT derives its cost per gallon of fuel from its first quarter 2009 Quarterly Financial Report. SECI adopted the cost per gallon included in the { } the CSXT/CSXI TSA agreement for fourth quarter 2008, indexed to first quarter 2009. CSXT claims that SECI's TSA cost per gallon is an unrealistic price that has nothing to do with market-based, forward looking costs. CSXT also claims the TSA price is distorted by an "efficiency factor." CSXT Reply at III-D-23-24.

Contrary to CSXT's claims, the TSA agreement represents CSXT's actual cost of doing business and as such is the best reflection of the cost incurred

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<sup>7</sup> See Part III-C-1-g. It should be noted that SECI and CSXT used the same method to calculate switch locomotive unit miles. The substantial difference in the number of locomotive unit miles between the parties is due to CSXT's inappropriate addition of switch locomotives and crews at various locations throughout the SFRR system. SECI fully discusses CSXT's switch locomotive assignments in Part III-C-1-g.



by CSXT and that which would be incurred by the SFRR.<sup>8</sup> Stated differently, the amount included in CSXT/CSXI agreement is the amount CSXT pays for fuel.

The transfer price per gallon in the TSA for 4Q08 equals { } per gallon<sup>9</sup> and the price per gallon shown in CSXT's fourth quarter 2008 Quarterly Financial Report equals \$2.22 per gallon. SECI is not privy to the details of why the transfer price and the price reported CSXT's financial report differ, however, the transfer price equals CSXT's { } described in the TSA and thereby the amount CSXT actually pays for fuel. As a result, SECI continues to use the TSA and supporting documentation as the basis for its fuel price evidence on Rebuttal.

As shown in Rebuttal Table III-D-2 above, CSXT has also included a fuel drayage cost of \$0.0216 per gallon. In addition, CSXT adds a cost for two trucks at each of the four fueling locations which includes the cost of the truck, fuel for the truck, the driver and insurance. SECI has not included either of these incremental fuel costs for two reasons. First, these incremental costs are not separately identified in the TSA agreement workpapers, which SECI relies on for its fuel cost. As a result, they are included in the fuel costs actually incurred by CSXT and should not be separately included for the SFRR. Second, CSXT's

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<sup>8</sup> The TSA characterizes the fuel price as { } See SECI Rebuttal e-workpaper "TSA Fuel Price.pdf."

<sup>9</sup> When indexed to 1Q2009 this equals the \$1.008 per gallon used in SECI's evidence.

attempt to add the cost of contractors to annual fuel costs should be rejected for the same reason that a similar attempt was rejected in *Duke/CSXT*, where the Board held that CSXT's annual fuel costs include an embedded labor component in the storage and dispensing costs. *Id.* at 455. This supports SECI's position that the annual fuel cost already includes both the drayage cost and the cost of the contractor dispensing the fuel.

## **2. Railcars**

### **a. Leasing**

CSXT accepts SECI's general methodology for determining car lease expenses for the SFRR's coal, general freight and intermodal cars, including its full service lease dollar values and its proposed spare margin of 5.0%. CSXT Reply at III-D-26-28. However, CSXT adjusts SECI's general freight car costs in two ways. First, CSXT develops the "required empty movements" for the SFRR's general freight cars (which SECI allegedly omitted), based on the hypothetical car and train movements derived from its operating plan for the SFRR. Second, CSXT develops assumed customer "dwell" times for general cars (the time between delivery of an empty car to a customer and pickup of the loaded car at an origin). CSXT then assigns a cost to the additional car-hours resulting from these two adjustments. CSXT Reply at III-D-27-28.

As fully discussed in Part III-C-1, CSXT's operating plan is fatally flawed, unreliable and unusable for the development of operating statistics for the SFRR. CSXT used its flawed operating plan to determine empty car movements on

the SFRR. To do so CSXT identified the loaded SFRR revenue general freight cars it would move on the SFRR and then determined the empty car movements related to these cars based on CSXT's URCS empty return ratios.<sup>10</sup>

In contrast, SECI determined loaded car movements from CSXT's traffic files provided in discovery and then identified the actual manifest trains used to move these cars. SECI moved *all* cars on these trains, including both SFRR revenue loaded cars and non-SARR loaded cars and all empty cars, thus hauling any and all empties moving over the SFRR system via the same trains used to move revenue loads. In doing so, SECI captured the actual empty car movements rather than hypothetical empty car movements relied on by CSXT.

CSXT also claims to have added dwell time associated with the time that general freight cars are at customer locations, *i.e.* "the time from when the railroad delivers an empty car to a customer until the carrier picks up the loaded car at origin, and the time from when the railroad delivers a loaded car to a customer until the carrier picks up the empty car at destination." CSXT Reply at III-D-27. CSXT claims to have corrected SECI's "significant deficiency" by analyzing information provided to SECI in discovery in order to calculate dwell times and then adding this dwell time to its car-hours calculations.

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<sup>10</sup> As discussed on page III-D-9 of its Reply Narrative, CSXT assumes the SFRR moves the loaded non-SARR cars, but erroneously rejects the notion that the SFRR moves the empty non-SARR cars even though these cars are actually moved on the same CSXT trains that handle the SFRR revenue loaded cars.

CSXT's dwell time additive is inappropriate for two reasons. First, CSXT's dwell time study and application of its results cannot be verified from CSXT's workpapers. At no place in CSXT's workpapers is the calculation of the average dwell time by car type shown, nor is the addition of the dwell time hours in the car hour calculation shown. CSXT states in footnote 26 on page III-D-28 of its Reply Narrative that the results of the customer dwell time study can be found at CSXT Reply e-workpaper "detail Sarr customer dwell(1).xls." However, this workpaper does not provide the "average dwell time by car type and car ownership" that CSXT claims at page III-D-27.<sup>11</sup> Instead, this spreadsheet contains a column titled "dwell hours" where data is entered for more than 75,000 cars, however, average dwell times are not provided anywhere.

Moreover, not only do CSXT's workpapers fail to show the calculation of the average dwell times, they do not show where the "average dwell time by car type and car ownership" is used in calculating total car hours. For example, CSXT's Reply e-workpaper spreadsheet "SFRR Freight Car Costs.XLS," tab "General Freight," shows the general freight car hours used to calculate car costs. These car hours are supported by a formula whose inputs are tied to CSXT's "Key Traffic Statistics.pdf" spreadsheets which are supposed to be output from its MultiRail program. The formula and data inputs to the formula that calculates the car hours relies on car counts and car hours from the Key Traffic Statistics

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<sup>11</sup> It should be noted that CSXT's workpapers contained a file titled "detail Sarr customer dwells.xls," *i.e.* a file with a slightly different title than that identified in the Reply Narrative. CSXT did not provide the file cited in its testimony.

Spreadsheet, but does not identify dwell hours. There is one “hard coded,” unsourced number equal to “23.5” in this formula that is multiplied times the number of empty cars which could be an overall dwell time factor per carload. However, this hard-coded, unsourced number is not labeled or defined and cannot be verified. Further, it does not match an average of the data appearing in the “dwell time” column of CSXT’s “detail Sarr customer dwell.xls.” spreadsheet.

The second reason for rejecting CSXT’s dwell time additive (even if it could be found and vetted) is that it does not account for demurrage charges that may accumulate from time to time in excess of free time, and which are a direct offset to the carrier’s cost of car ownership. CSXT does not mention demurrage offsets in its dwell time discussion, and they are not identified in CSXT’s sketchy workpapers. There simply is no way to identify or verify whether CSXT’s analysis correctly accounted for these items or even considered them.

CSXT further asserts that in calculating car costs related to multilevel auto cars, SECI neglected to reflect the fact that the racks on these cars (as opposed to the cars themselves) are owned by the railroad (*i.e.* the SFRR) rather than the shipper. CSXT Reply at III-D-28. CSXT is correct that SECI failed to reflect that the racks on multilevel auto cars are owned by the carriers and did not include the cost per car mile for these racks. However, CSXT’s calculation of the cost per mile for these racks is significantly overstated. To develop the cost per mile for auto racks, CSXT divided the annual cost from Schedule 414, line 18, column (g) of its 2008 R-1 Annual Report of \$41.9 million by loaded plus empty car miles

associated with private cars rather than by loaded and empty car miles associated with both private and railroad cars. Using the correct divisor reduces CSXT's cost per car mile for auto racks from \$0.2141 per car mile to \$0.1108 per car mile. On Rebuttal, SECI includes ownership costs for auto racks in the amount of \$5.3 million.

SECI's revised calculation of the SFRR's annual freight car lease costs is shown in Rebuttal e-workpaper "SFRR Car Costs\_Reb.xls."

**b. Maintenance**

CSXT accepts SECI's use of full service car leases for the railcars provided by the SFRR, and thus the underlying concept that the lease payments include maintenance costs. CSXT Reply at III-D-29. Differences in the parties' calculation of car maintenance costs are due to their differing calculation of the number of railroad-provided cars needed for general freight service.

CSXT also accepts SECI's provision of one End-of-Train Device ("EOTD") for each of the SFRR's locomotives (*id.*).

**c. Private Car Allowances**

CSXT accepts SECI's approach to private car allowances. CSXT Reply at III-D-29. CSXT did not dispute, and therefore presumably accepts, SECI's statement (SECI Opening at III-D-9) that shippers who supply railcars for their SFRR movements make their own separate arrangements for maintenance of their cars at existing car repair facilities on or near the route of movement.

### **3. Personnel**

There are two principal problems with CSXT's approach to determining the SFRR's personnel requirements. First, the CSXT witnesses' approach is consistent with the managerial mindset of a large, unionized Class I rail carrier. Not only are Class I carriers such as CSXT heavily unionized, their management structure – particularly on the operating side – reflects a hierarchical, militaristic approach with tight command-and-control that leads to excessive layers of management, rather than empowering employees to take on additional responsibilities and think for themselves. As a non-union startup, the SFRR is not burdened with rigid craft boundaries or by the kind of managerial mindset typical of a Class I railroad such as CSXT.

Second, CSXT's approach in this case is driven by its operating plan, under which the SFRR has numerous yards used for blocking cars and creating new road and local trains to carry the SFRR's non-coal traffic. CSXT's new operating plan (which the Board must reject for reasons explained previously) requires substantial numbers of additional T&E personnel, particularly for the additional switching operations proposed by CSXT. SECI's operating plan, on the other hand, uses existing CSXT trains that operate intact after receipt from CSXT or another carrier. The cost of intermediate and local/yard switching is accounted for by SECI's switching cost additives, which include an element for crew compensation. Thus there is no need to burden the SFRR with the large numbers of additional T&E personnel proposed by CSXT.

**a. Operating**

**i. Staffing Requirements – T&E Personnel**

On Opening, SECI determined that the SFRR requires a total of 502 T&E employees to operate its road trains, helper assignments, and yard switching assignments. CSXT proposes to increase the SFRR's T&E employees to 804. The increase is due to the new train operations contemplated by CSXT's operating plan (including a large number of new yard switching operations), and a reduction in the number of crew starts per year from 270 to 260.<sup>12</sup> SECI continues to use 270 crew starts per year, and continues to calculate T&E requirements based on the trains moving in the peak year pursuant to its operating plan which is based on the actual CSXT trains carrying SFRR cars in the base year. However, SECI has revised the SFRR's T&E employee count (using the same methodology specified on Opening<sup>13</sup>) based on the results of its rebuttal simulation of the SFRR's peak-period operations using the RTC Model. The revised T&E employee requirement is 550.

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<sup>12</sup> CSXT's rationale for changing from the Board's precedent of using 270 crew starts per year is based, in part, on its statement that: "Even in calendar year 2008, before the new hours of service regulations took effect, CSXT only had seven T&E employees with 270 annual starts." CSXT Reply at III-D-32. CSXT's statement is misleading at best. Review of Reply e- workpaper "CSX T&E Salary Roster.xlsx," tab "2008" reveals that in 2008 CSXT had only seven T&E employees who work exactly 270 shifts. This CSXT workpaper also reveals that CSXT had 229 T&E employees working 270 or more shifts per year in 2008, a substantially different number of employees than CSXT's statement implies.

<sup>13</sup> See SECI Opening at III-D-11-12.



This includes re-crews resulting from crew expirations under the hours of service law.<sup>14</sup>

While acknowledging that the Board has accepted 270 starts per crew per year (“crew starts”) in prior SAC rate cases,<sup>15</sup> CSXT suggests that, due to the changes in the FRA hours of service rules that became effective in July 2009, a “more realistic assumption” as to the number of crew starts is 260. CSXT Reply at III-D-32. CSXT bases this assumption on the new requirements for 10-hour periods of undisturbed rest, 48 or 72 hour mandatory rest requirements (depending on the number of starts during a six or seven day period), and a cap on maximum hours per month. *Id.*

SECI’s operating experts disagree that the new hours of service requirements, which were enacted in Section 108 of the Rail Safety & Improvement Act of 2008, 49 U.S.C. § 20157 (“RSIA”), prevent a SARR from achieving 270 crew starts per year. The changes to the hours of service requirements enacted by RSIA that affect crew starts include the following:<sup>16</sup>

- On-duty and limbo time (including deadhead time) is capped at 276 hours per month;

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<sup>14</sup> On Rebuttal, SECI has added 46 T&E employees to account for deadheading general freight and intermodal train crews back to the train’s home terminal when necessary. The calculation of the deadheaded crews is shown in Rebuttal e-workpaper “SECI Deadhead Crews.xls.”

<sup>15</sup> See, e.g., *WFA/Basin* at 47.

<sup>16</sup> The cited provisions are codified in 49 U.S.C. § 21103. RSIA did not change the prior requirement that a train crew’s tour of duty cannot exceed 12 consecutive hours.

- Off-duty hours are increased to 10 uninterrupted hours in a 24-hour period following a tour of duty exceeding 12 hours;
- Requires 48 consecutive hours off-duty at the employee's home terminal after six consecutive days worked and 72 consecutive hours off-duty at the employee's home terminal after seven consecutive days worked; and
- Limbo time spent after completing service and awaiting transportation or being transported to the point of release is reduced to 40 hours per month during the first year after enactment, and to 30 hours per month thereafter.

CSXT provides no basis for its "assumption" that under the new hours of service regulations, it is more realistic to use 260 crew starts per year for T&E employees. It is very unlikely that any of the SFRR's T&E employees would work 270 twelve hour shifts in a year. However, even if some do perform this level of work, Rebuttal Table III-D-3 below shows that 270 shifts per year is possible under the new hours of service regulations.

<b>REBUTTAL TABLE III-D-3</b> <b>270 CREW STARTS PER YEAR ARE POSSIBLE UNDER THE</b> <b>NEW HOURS OF SERVICE REGULATION</b>	
<b><u>Regulation</u></b>	<b><u>Demonstration</u></b>
On-duty and limbo time is capped at 276 hours per month	270 crew shift per year equal 22.5 starts per month. Even assuming every shift is 12 hours equals 270 hours per month
Off-duty hours are increased to 10 uninterrupted hours in a 24-hours in a period following a tour of duty exceeding 12 hours	12 hour shift plus 10 off-duty time equals 22 hours, i.e. less than 24 hours
Consecutive 48 hours required off-duty at employee's home terminal after 6 consecutive days worked.	22.5 shifts per month/6 day consecutive shifts equal 3.75 six day shifts per month. Adding 48 hours per shift = 8 days per consecutive six-day shift. Thirty days per month/8 days per shift = 3.75 shift per month.
Limbo time spent after completing service and waiting transportation or being transported to the point of release is reduced to 40 hours per month in 1 <sup>st</sup> year and 30 hours per month thereafter	The average distance for travel distance for expiring SFRR crews equals 11.9 miles, assuming travel at 30 mph equals 23.8 minutes per shift x 22.5 possible shifts per month = 8.9 hours per month for travel, leaving 21.1 hours of wait time available

CSXT also proposes a substantial increase in the T&E personnel needed for yard switching activities. In comparison to the four yards provided in SECI's operating plan, where switching is performed in connection with 1,000/1,500-mile inspections, CSXT has proposed 13 additional regional and local yards where SFR merchandise traffic is switched and blocked. 294 of the total of 302 additional T&E employees proposed by CSXT are for switch crews at these additional locations. CSXT Reply at III-D-34. However, as explained earlier, CSXT's operating plan, and the associated new yards and switching called for

under it, must be rejected by the Board. The additional switch crews are not needed under SECI's operating plan, and under that plan switching activity for merchandise cars is accounted for by SECI's intermediate and yard/local switching cost additives. Since these additives include operating (and thus crew) costs, adding T&E personnel to handle CSXT's proposed yard switching results in a double-count of these costs.

In addition, CSXT's operating plan incorrectly assumes the SFRR accepts CSXT's actual trains, including both SARR and non-SARR cars, and breaks apart each train into individual cars, re-blocks all of the cars into new trains and moves the newly created trains to destination, interchange or another intermediate yard for re-blocking yet again. This assumption burdens the SFRR with tens of thousands of unnecessary yard train assignments, hundreds of unnecessary train and enginemen, and dozens of yard engines to perform total unneeded blocking and switching functions for trains which are merely being received or forwarded between the SFRR and CSXT in interchange. The absurdity of CSXT's operating plan is easily demonstrated by two examples.

First, in calculating its switch cost additive, SECI identified *all* actual CSXT yard trains which handled *any* SFRR revenue car in 2008, anywhere on the SFRR system. As shown in SECI's Opening e-workpaper "SFRR Switch Cars and I&I Costs.xls," this equaled a total of 2,282 yard train assignments in 2008. In contrast, CSXT's operating plan, which re-blocks all of SFRR's general freight and intermodal carloads at least once, if not several times, has included more than

38,106 switch train assignments in the 2018 peak year<sup>17</sup> an increase of more than 16 times the number of switch crew assignments that actually handled the SFRR traffic!

Second, making this same comparison for the individual location of Atlanta, shown in both SECI's and CSXT's workpapers cited above, shows that a total of 54 yard train assignments handled all SFRR revenue cars moving to, from or through Atlanta in 2008. By contrast, CSXT has included 3,395 yard train assignments to handle SFRR switching requirements in Atlanta in the 2018 peak year -- an astounding 63 times the number of actual CSXT yard trains needed to perform this work. CSXT's operating plan clearly has no relationship to the reality of CSXT yard train assignments or the needs of the cars handled by the SFRR.

**ii. Staffing Requirements - Non-Train Operating Personnel**

The difference between the parties' positions on the staffing requirements for the SFRR's non-train operating personnel (other than maintenance-of-way personnel, which are discussed separately in Part III-D-4 below) are summarized in Table III-D-7 on page III-D-43 of CSXT's Reply Narrative.<sup>18</sup> SECI provided a total of 237 such non-train operating personnel;

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<sup>17</sup> Sum of switch assignments at each year shown in column Crew/Hr from CSXT Reply e-workpaper "GF – SFRR 2018 Yard Switching Crews/Locos.pdf" x 3 shifts per day x 365 days per year = 38,106 crew starts per year.

<sup>18</sup> CSXT's table shows 220 employees per SECI. However, the table understates the Equipment Inspectors by 17. The correct number of Equipment

CSXT proposes to increase this number to 543, an increase of 306 employees or 129%.

As CSXT acknowledges (CSXT Reply at III-D-36), most of the increase in operating personnel drive from differences between the parties' respective operating plans, in particular CSXT's proposed operations at 13 additional yards which requires additional supervisors, inspectors and other support employees. These additional yard operations are unnecessary under SECI's operating plan, which the Board should accept in preference to CSXT's operating plan. Rejection of CSXT's operating plan requires rejection of its inflated operating employee count.

The following discussion addresses specific differences between the parties with respect to each category of operating employees below. (If a position shown in CSXT's Table III-D-7 is not discussed, the same position is included by both parties and the employee count for that position is the same.)

Managers and Assistant Managers of Train Operations. SECI's operating plan provides for six Managers of Train Operations ("MTO," equivalent to a Trainmaster on a Class I railroad) and ten Assistant Managers of Train Operations, or a total of 16 employees in this category.<sup>19</sup> CSXT's operating plan

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Inspectors is 141, not 124, which increases SECI's total employee count to 237. See SECI Opening at III-D-13, 20 and CSXT Reply at III-D-41.

<sup>19</sup> There are actually six Assistant Manager positions, but one position is a 24/7 position which means a total of ten employees are needed to man the six positions. See SECI Opening at III-D-15.

calls for a total of 22 MTOs and no Assistant MTOs, or a net increase of six employees in this category. CSXT provides one MTO position for each of the 11 SFRR crew districts posited under its operating plan, with two employees for each position to provide 24/7 coverage. CSXT Reply at III-D-37.

CSXT's 11 proposed crew districts are primarily a function of the way it proposes to move the SFRR's non-coal traffic, with new blocking schemes and hypothetical new trains which replace the actual base-year CSXT trains that the SFRR operates under SECI's operating plan. SECI has provided for a total of seven crew districts (SECI Opening at III-C-40-42), and CSXT has not shown why these districts are inadequate. Moreover, CSXT has not explained why the SFRR's MTO districts should exactly match its crew districts, or why an MTO needs to be on duty around the clock in each district.<sup>20</sup> In the experience of SECI's operating experts there is no direct relationship between crew districts and Trainmaster or MTO territories, and Trainmasters often cover more than one crew district (Class I railroad crew districts are typically shorter than the SFRR's crew districts due to collective-bargaining agreements and vestiges of the old "100-miles per day = one

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<sup>20</sup> Trainmasters on most railroads usually are on duty one shift per day, but are on call if problems arise when they are off-duty. Here, SECI has provided for dual coverage by MTO's and Assistant MTOs, and one of the latter (where trains operations are the most dense) is a 24/7 position.

SECI notes that under CSXT's theory of one MTO per crew district, and assuming the Board accepts SECI's seven crew districts, CSXT should have provided a total of 14 MTO employees and no Assistant MTO employees, or two less employees for this category than the 16 employees provided by SECI.

shift” rule). Moreover, SECI’s Assistant MTOs fill in any gaps in needed supervision of road train operations. In short, the Board should accept SECI’s proposed staffing for this category of operating employees.

Managers of Locomotive Operations. SECI proposes six Manager of Locomotive Operations (“MLO”) positions, which match the MTO positions and territories. CSXT proposes 11 MLO positions, or an increase of five employees for this category, again to match the 11 crew districts it proposes. CSXT Reply at III-D-37. The Board should, again, reject CSXT’s increase because no direct relationship is required between MLO territories and crew districts. A MLO does spend all his time in a single crew district, and to do so would be an inefficient use of his time since he does not monitor all or even most engineers operating in a single crew district on anything approaching a daily basis.

Terminal Superintendents and Yardmasters. CSXT proposes 14 Terminal Superintendant positions to cover its 13 proposed regional and local yards for merchandise cars and the Newell, PA coal yard, with six being 24/7 positions requiring two employees to provide around-the-clock coverage, for a total of 20 employees. It also proposes a total of 54 Yardmaster employees to provide 24/7 coverage at its “13 major merchandise yards”.<sup>21</sup> CSXT Reply at III-D-37-38.

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<sup>21</sup> It is unclear why CSXT uses the terminology “major merchandise yards” in referring to Yardmasters. Elsewhere it refers to 13 “regional and local yards” for merchandise traffic. Having 24/7 coverage by a Terminal Superintendent (or even a Yardmaster) is absurd for local merchandise yards where the volume of traffic to be switched would be relatively small.



SECI's operating plan does not provide for any Terminal Superintendents, in addition to the 24/7 Manager of Terminal Operations<sup>22</sup> assigned to each of the SFRR's four inspection/fueling yards. Under SECI's Operating plan a total of 20 Manager of Terminal Operations employees are provided (five for each yard to provide 24/7 coverage). Thus, CSXT proposes to nearly triple SECI's Yardmaster-equivalent employee count.

Again, rejection of CSXT's operating plan requires rejection of its 13 merchandise yards and associated Terminal Superintendant and Yardmaster positions. With respect to the four principal yards provided in SECI's operating plan, switching activity at these yards is limited to the removal of bad-order cars from trains and the insertion of repaired or spare cars into trains – no classification or block-switching is performed (although the cost of such switching for merchandise traffic is accounted for by SECI's intermediate and yard/local switching cost additives). Given the absence of significant classification switching at any of these yards, there is no need to add an additional layer of supervision (*i.e.* Terminal Superintendents) over and above the Managers of Yard Operations and the 24/7 coverage of yard operations that they provide. The Board should reject CSXT's inclusion of any Terminal Superintendents.

Crew Manager and Crew Callers. SECI's operating plan calls for one Crew Manager. CSXT proposes two such positions, one for each of the SFRR's

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<sup>22</sup> SECI's Manager of Terminal Operations positions are the equivalent of CSXT's Yardmaster positions, and CSXT calls both positions Yardmasters in its Table III-D-7.

two divisions (East and West) which CSXT inexplicably “translates” into three employees. CSXT Reply at III-D-39. Both parties provide for a total of nine Crew Caller employees.

SECI provided for one Crew Manager position because the SFRR has an automated crew-management system, which is designed to handle virtually all basic crew interactions via automated calling and response systems (including identifying the proper crews for the proper jobs and automatically routing calls from crews to the appropriate dispatcher). *See* SECI Opening at III-D-16-17 and III-D-46-47. III-D-3-c-i-d. The Crew Manager manages the crew-calling system and supervises two Crew Caller positions, one for each division, which are staffed 24/7. CSXT has not explained why an additional Crew Manager position (inexplicably staffed by two employees) is needed. Under CSXT’s proposal each of the two Crew Manager positions would supervise a single Crew Caller position, which is absurd on its face. Accordingly, the Board should accept the single Crew Manager proposed by SECI.

Dispatchers. SECI’s operating plan calls for six dispatcher districts or desks located at the SFRR’s Folkston headquarters, three of which are responsible for dispatching trains and equipment on the SFRR’s West Division and three of which are responsible for these activities on the East Division. Each desk is manned 24/7, which requires a total of 28 employees. SECI Opening at III-C-61-62 and III-D-17-18.

CSXT proposes 11 dispatcher districts, one for each of its 11 proposed crew districts, plus a Chief Dispatcher. The total Dispatcher and Chief Dispatcher employees needed to man these positions, all of which would be 24/7 positions, is 53 (or nearly double the 28 positions proposed by SECI). CSXT Reply at III-D-39, 43.

CSXT has provided no explanation for why the SFRR needs a Chief Dispatcher. The position is an extra layer of management that is not needed in the SFRR's environment, given its use of modern, computer-aided dispatching systems which enables the Dispatchers to communicate with each other quickly and efficiently, and cover parts of each others' territory when needed. SECI Opening at III-C-62 and III-D-47. Nor has CSXT explained why the SFRR's dispatching districts should match its crew districts (even if the SFRR needed 11 crew districts, which it does not). On most railroads the dispatching districts cover more than one crew district. The Board should reject CSXT's proposal to add a Chief Dispatcher position and should accept the 28 Dispatcher employees proposed by SECI.

Director and Managers of Operating Rules, Safety & Training.

SECI's operating plan provides for one Director and two Managers of Safety & Training, with each Manager responsible for safety and training on one of the SFRR's two divisions. SECI Opening at III-D-18. CSXT proposes two Directors of Safety & Training and 11 Managers of Safety & Training, with each Manager assigned to one of the SFRR's 11 crew districts. CSXT Reply at III-D-39-40.

CSXT's description of the tasks these employees would perform is virtually identical to SECI's description. Yet CSXT provides no explanation of why the SFRR needs a Director of Safety & Training for each division, and no explanation for its huge increase in staffing for the Manager positions. One can speculate that the reason for the increase lies in the much larger number of T&E crews, particularly yard switching crews, proposed by CSXT in connection with the expanded yard operations under its operating plan. If this is the reason, it fails because CSXT's operating plan, with its new blocking arrangements that result in new trains, cannot be accepted.

Moreover, there is no reason why each employee responsible for safety and rules training cannot cover multiple crew districts. This is the practice on most railroads, and CSXT's witnesses have not pointed to any CSXT standard that calls for one Manager of Safety & Training per crew district. CSXT's made-for-litigation proposal for 11 such Managers is overkill, and (like many of its other staffing proposals) patently designed to jack the SFRR's staffing up to the highest possible level in order to increase the SFRR's annual operating expenses.

Director and Managers of Mechanical Services. On Opening SECI specified one Director of Mechanical Services, who reports to the Vice President-Mechanical, and who is responsible for equipment repairs (including the interface with the SFRR's locomotive and car maintenance contractors) and supervising the Equipment Inspectors at the SFRR's four yards. The only employees reporting to the Director are the two Managers of Testing and Environmental. SECI Opening at

III-D-19-20. CSXT proposes to increase the number of Directors to two. CSXT does not propose any change in SECI's Testing & Environmental staffing, but it does propose to add 15 new Manager Mechanical Services positions. CSXT Reply at III-D-40-41, 43.

According to CSXT, the new Manager Mechanical Services positions are needed to supervise equipment repairs and the Equipment Inspectors at the 14 yard locations where 1,000 or 1,500-mile inspections are performed under its operating plan, with two Managers to be stationed at Callahan Yard.<sup>23</sup> However, if the Board rejects CSXT's proposed operating plan, it must also reject the 13 regional and local yards where switching of carloads of general freight traffic is performed under that plan (and the associated Equipment Inspector positions posited by CSXT, as described below).<sup>24</sup>

Under SECI's operating plan the SFRR has a total of four yards where car inspections are performed – Newell, Petersburg (Collier), Folkston and Nashville. Day-to-day supervision of the Equipment Inspectors at these yards is performed by the 24/7 Managers of Yard Operations (referred to as Yardmasters by

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<sup>23</sup> CSXT proposes (unnecessarily) to relocate the SFRR's yard at Folkston, GA to Callahan, FL. Under CSXT's operating plan this yard would have the highest volume of switching activity for general freight traffic of any of the SFRR's yards.

<sup>24</sup> SECI also notes that the cost of the operating functions involved in performing I&I and local/yard switching (including employee wages) is covered by SECI's switching cost additives. Inclusion of salaries for the personnel involved in car inspections and equipment maintenance at specific locations, as proposed by CSXT, would result in a double-count of these costs.

CSXT) at these yards. Since the only switching activity to be performed at these yards is switching in connection with inspections (removal of bad-order cars from trains and insertion of repaired/spare cars), the Manager of Yard Operations can easily supervise the inspection crews (in addition to assisting the MTO or Assistant MTO stationed at each yard in supervising the yard switch crews). There is no need for adding a third category of supervisor (Manager of Mechanical Services) at any of these yards.

Equipment Inspectors. On Opening, SECI designated 141 Equipment Inspectors to handle 1,000/1,500-mile car inspections at the SFRR's four yards where such inspections are performed. These employees man a total of eight four-person inspection crews that are on duty 24/7 at the four inspection yards. SECI Opening at III-D-20-21.<sup>25</sup>

CSXT proposes to increase the number of Equipment Inspectors to 329, an increase of 205 employees or 165% from SECI's staffing level. CSXT Reply at III-D-41-42. The reason given for this increase is CSXT's "detailed blocking/origination/termination/classification plan" under its SFRR operating plan, under which cars allegedly require inspection at each of the SFRR's 13 regional and local merchandise yards in addition to Newell Yard.<sup>26</sup> However, CSXT's scheme

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<sup>25</sup> The inspection procedures followed by these crews are described at pp. III-C-58-59 of SECI's Opening Narrative.

<sup>26</sup> *Id.* at III-D-41. As CSXT acknowledges, the SFRR's Newell Yard is used for inspection of coal trains only. SECI has provided two four-person inspection crews, totaling 35 employees, at Newell Yard. SECI Opening at III-D-21.

for creating new blocks of merchandise cars and new trains to move those cars much be rejected because, as shown in Part III-C-1, there is no way to tie them to the service requirements of the SFRR's customers. This also requires rejection of CSXT's proposed new merchandise yards and the associated car inspections at those yards.

SECI's I&I and yard/local switching cost additives include costs for all switching operations involving the SFRR's merchandise cars (including costs associated with car inspections), but even if the Board were to accept the concept that merchandise cars need to be inspected at more than the three locations where they are inspected under SECI's operating plan (Petersburg, Folkston and Nashville), CSXT has failed to explain the reason why so many cars require inspection at each location (as opposed to being inspected at off-SFRR locations), or why so many inspection crews are needed at each location.<sup>27</sup>

### **iii. Compensation**

A comparison of the total compensation proposed by SECI for its Operating personnel (other than MOW personnel), including salaries and benefits, is shown in Table III-D-7 on page III-D-43 of CSXT's Reply Narrative. Most of

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<sup>27</sup> CSXT's development of the number of Equipment Inspectors at each location is shown in its Reply e-workpaper "Inspection – GF and Coal/Bulk.pdf." It appears CSXT proposes to use two-person inspection crews, which is not nearly as efficient as the four-person crews designated by SECI's Witness Reistrup. A four person crew can inspect a train in less than half the time of a two-person crew, as two members of the crew start simultaneously at each end of the train, one on each side, and work toward the middle. See SECI Opening at III-C-59.

the difference is accounted for by the difference in the number of employees proposed by the parties for various classes of Operating personnel.

As CSXT notes (*id.* at III-D-35), SECI relied largely on data from CSXT's Wage Forms A and B in developing employee compensation levels. CSXT states that it accepts SECI's proposed compensation levels (per employee) in large measure, except for two groups of employees: T&E employees and Dispatchers. *Id.* at III-D-42. However, CSXT's Table III-D-7 also proposes, without explanation, much higher compensation levels for the Vice President–Transportation, Vice President–Mechanical and Vice President– Engineering. Each of these categories is discussed below.

Vice Presidents. With respect to the three Vice Presidents included in the SFRR's Operating personnel, the parties' compensation amounts differ substantially. As fully discussed below under General and Administrative compensation, the difference between the parties compensation for Vice Presidents is related to CSXT's inappropriate inclusion of stock options, option awards and other forms of compensation which the Board has historically rejected. *See, WFA/Basin* at 49 and *Otter Tail* at C-12. On Rebuttal, SECI continues to rely on compensation for Vice Presidents as previously accepted by the Board.

T&E employees. With respect to T&E personnel, CSXT first disputes SECI's reduction of the average wages for CSXT T&E employees shown in CSXT's Wage Forms A and B by 10 percent to reflect the lower wage levels paid to NS T&E employees. CSXT Reply at III-D-30-31. CSXT disputes SECI's



reduction for two reasons. First, it claims that the discount is calculated based on wages reported for all transportation personnel, not just engineers and conductors. Second, CSXT claims that because of differences between CSXT and NS accounting, any difference in the total compensation for transportation personnel is non-existent. CSXT's claims are without merit.

First, CSXT's claim that SECI used more than just engineers and conductor's wages in this analysis is correct. To perform its analysis, SECI used publically available wage information for NS which is only available on an aggregate level, i.e. Line 600 of Wage Form A & B includes all transportation operating personnel. In an attempt to discredit SECI's analysis, CSXT claims that engineers and conductors "represent only about 50% of the employees included in the Line 600 group." *See* CSXT Reply at III-D-30. Contrary to CSXT's statement, review of CSXT's detailed Wage Form A & B report for 2008, provided by CSXT in discovery, shows that 89.2 percent of employees in the Line 600 group are either conductors or engineers<sup>28</sup> -- or far higher than CSXT's calculation of "only about 50%". Moreover, the total compensation for engineers and conductors in the Line 600 group represent 91.1% of the compensation for this category and therefore the

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<sup>28</sup> This includes all engineers and conductors, i.e., through freight, local and way freight, yard, passenger engineers and conductors and hostlers.

entire category is a fair representation of the differential between compensation paid by CSXT and NS for all transportation personnel.<sup>29</sup>

Second, CSXT's claim that reporting differences between CSXT and NS mask the total compensation to these employees is incorrect for two reasons. None of CSXT's claims related to NS's reporting methods for crew wages are supported by any evidence, and those methods are not publicly available, which means these claims cannot be verified. Even if CSXT's statements regarding CSXT's reporting methods as they compare to NS's reporting methods are accurate, the total compensation must be reported in the two carrier's respective Wage Forms A & B. If CSXT and NS report compensation differently within their respective Wage Forms A & B by using the total compensation in those reports in its analysis, SECI has captured all of the compensation regardless of how it is reported.

CSXT also asserts that SECI understated T&E wages by proposing 270 starts per crew starts per year, while only seven CSXT T&E employees (all engineers) achieved that number of crew starts.<sup>30</sup> CSXT proposes to use the average wages for T&E employees who achieved 260 crew starts in 2008, rather

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<sup>29</sup> Rebuttal e-workpaper "CSXT engineers and conductors as a percent of transportation employees.pdf" provides CSXT's Wage Form A&B and the calculation of the percentage of total transportation employees' compensation represented by engineers and conductors.

<sup>30</sup> As shown earlier, CSXT is correct that only seven engineers and conductors worked exactly 270 shifts in 2008. However, 229 CSXT enginemen and conductors worked 270 shifts or more in 2008.

than the average wage for all CSXT T&E employees regardless of the number of crew starts involved. CSXT Reply at III-D-32. If the Board accepts 270 crew starts per year, CSXT suggests the Board use the average 2008 salary of the seven CSXT engineers who achieved that number in 2008.<sup>31</sup> However, an examination of the workpapers underlying CSXT's crew calculations reveals that SECI's average wages for engineers and conductors is consistent with the wages paid by CSXT for the many engineers and conductors who had more than 250 crew starts in 2008.

For example, review of CSXT's Reply e-workpaper "CSXT T&E Salary Roster.xlsx" shows that 35 out of the 309 engineers shown had more than 250 starts in 2008 and salaries of less than \$80,000. The average number of starts for these engineers was 266 (close to the 270 starts posited by SECI), and the average wage for these engineers was \$75,430 – which is less than SECI's proposed engineer wage of \$79,172. The same workpaper shows that 64 out of 254 CSXT conductors had more than 250 starts in 2008 (the average again was 266 starts), with wages of less than \$70,000. These 64 conductors had an average salary of \$63,037 per year compared with SECI's proposed conductor salary of \$69,266. In other words, CSXT had a substantial number of engineers and conductors who worked a high number of shifts in 2008, at average salaries lower than those included in SECI's Opening Evidence.

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<sup>31</sup> According to CSXT, the average 2008 wage for these seven engineers was \$91,061 per employee, compared with SECI's proposed engineer wage level of \$79,112. Also according to CSXT the average 2008 wage for all T&E employees who worked 260 starts per year was \$85,599. *Id.* at III-D-32-33.

Dispatchers. SECI used the average wages (equal to \$48,582 at 1Q09 levels) paid to the ten highest-paid CSXI dispatchers in 2008 as the basis for calculating wages for the SFRR's Dispatchers. SECI Opening at III-D-23. However, CSXT asserts that SECI erroneously used CSXI salaries for truck dispatchers, not train dispatchers who are paid a higher annual salary. CSXT Reply at III-D-35-36, 42. In contrast, CSXT used dispatcher wages from its 2008 Wage Form A & B indexed to 1Q09 (equal to \$88,907). However, CSXT's Reply e-workpaper "CSXT T&E Salary Roster.xlsx" shows total wages for 53 train dispatchers. The average total income for those dispatchers appearing in this spreadsheet that worked more than 150 shifts per year equals \$50,656 at 1Q09 wage levels. Clearly, according to CSXT's own data, it pays numerous dispatchers wages that are similar to those included in SECI's Opening Evidence. Based on these CSXT documents, SECI has not changed the wages included of dispatchers in its Rebuttal Evidence.

\* \* \*

The SFRR also incurs taxi and overnight expenses for train crews. CSXT accepts SECI's taxi and per-night hotel costs, but applies them to its own, separate count of overnight stays, taxi trips and crew deadheads. CSXT Reply at III-D-34-35.<sup>32</sup>

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<sup>32</sup> CSXT alleges that SECI had to "guess at the number of overnight stays and taxi trips," but this is not the case. SECI has assigned hotel stays and taxi trips to each train crew that required them in 2009. See Op. e-workpaper "SFRR Crew

CSXT's counts are flawed because they are based on the train operations derived from its flawed operating plan. In addition, CSXT's counts reflect annualizing a single day's operating statistics from its MultiRail program and RTC Model simulation of the SFRR's peak-period operations. This is inconsistent with Board precedent, which requires that taxi trips and overnight stays be developed using the actual train counts (and the crews' related taxi and hotel requirements) over an entire year. *See WFA/Basin* at 48 and *PSCo/Xcel* at 652.

Since the SFRR's base year train counts have been revised on Rebuttal, the number of crew expirations, taxi trips and overnight stays has changed from Opening. The revised calculations are shown in SECI Rebuttal e-workpaper "SFRR Crew and Overnights-Reb.xls," tab "Crew-Taxi." The revised annual cost for taxi and overnights is shown in Rebuttal e-workpaper "SFRR Operating Expense\_Reb.xls."

#### **iv. Materials, Supplies and Equipment**

Table III-D-8 on page III-D-44 of the CSXT's Reply Narrative compares the parties' annual (2009) costs for materials, supplies and equipment for Operating personnel other than MOW employees. CSXT's proposed cost is \$4.4 million, or \$3.3 million more than SECI's proposed cost of \$1.1 million. Most of the difference is due to CSXT's much higher Operating employee count, which should be rejected for the reasons discussed earlier.

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and Overnights.xls," tab "Crew-Taxi," and Rebuttal e-workpaper "SFRR Crew and Overnights\_Reb.xls," tab "Crew-Taxi."

CSXT asserts that although SECI provided vehicles for many of its Operating personnel, it made no provision for the cost of gasoline, oil changes, tires, meals, or away-from-home expenses for the employees who use them. *Id.* at n. 44. CSXT also states that its travel expense per employee includes amounts for each of these items. On Rebuttal, SECI has accepted CSXT's travel expense per person and applied it to those employees who would travel.

**b. Non Operating**

Both parties treat all of the SFRR's personnel as either Operating personnel or as General & Administrative ("G&A") personnel. CSXT Reply at III-D-45. Both parties discuss the SFRR's maintenance-of-way employees, who are also Operating personnel, in Part III-D-4 of their Opening and Reply Narratives, and SECI further addresses MOW issues in Part III-D4 of this Rebuttal Narrative.

**c. General and Administrative**

On Opening, SECI included \$19.7 million for G&A costs, including costs related to personnel, materials and supplies, and the outsourcing of various activities. SECI's Opening Evidence organized the SFRR's 71 G&A personnel into four separate Departments responsible for the railroad's principal staff functions. *See* SECI Op. at III-D-25 to 43.<sup>1</sup> Those included an Executive Department, a Marketing and Customer Service Department, a Finance/Accounting Department,

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<sup>1</sup> SECI also has determined that it will add 26 additional employees to its G&A staffing on Rebuttal.

and a Legal & Administration Department (which also is responsible for the Human Resource and Information technology functions).

Notably, SECI's G&A staffing for the SFRR on Opening was the largest staffing level ever submitted by a shipper-complainant in a stand-alone cost rate case, substantially exceeding staffing levels even in prior cases involving eastern carriers. *See, e.g., Duke/CSX* at 460 (shipper proposed 59 G&A personnel); *Duke/NS* at 156 (shipper proposed 59 G&A personnel); *CP&L* at 294 (shipper proposed 59 G&A personnel); *TMPA* at 675 (shipper proposed 55 G&A personnel); *PSCo/Xcel* at 648 (shipper proposed a G&A staffing level of 35); *Otter Tail* (shipper proposed a G&A staffing level of 49); *AEP Texas* at 51-53 (shipper proposed a G&A staffing level of 59); *WFA/Basin* at 43 (shipper proposed a G&A staffing level of 37).

Moreover, the G&A staffing set forth in SECI's opening evidence level actually exceeded the largest G&A staffing level ever accepted by the Board in a SAC coal transportation case (66 employees; *see AEP Texas* at 51-53). It also exceeded the G&A staffing levels accepted by the Board in prior eastern SAC cases. *See Duke/CSXT* at 460 (accepting G&A staffing level of 59); *Duke/NS* at 156 (accepting G&A staffing level of 63); *CP&L* at 294 (accepting G&A staffing level of 63).

In its Reply Evidence, however, CSXT proposes to more than *triple* the G&A staffing level that SECI proposed on Opening to a staggering level of 210 personnel. This 210-level G&A staffing is the largest staffing level ever proposed

by a carrier in a SAC case, and reflects repeated instances in which CSXT has argued for the inclusion of personnel that the STB has rejected in prior cases.

On the basis of its enormous staffing proposal, CSXT argues that 2009 G&A expenses for the SFRR should be increased to a level that is 237% of SECI's estimate (*i.e.*, \$46.7 million). The \$27 million disparity between the parties' estimates amounts to more than 11 percent of the total 2009 operating cost difference between the parties' Opening and Reply evidence.

The difference in the parties' evidence regarding G&A staffing levels relates to CSXT's inclusion of an excessive number of employees in each department, including an additional 57 employees in the Finance and Accounting Department, an additional 38 employees in the Law and Administration Department, an additional 29 employees in the Marketing and Customer Service Department, and an additional 15 employees in a new and overstaffed IT department, for a total increase in staffing from 71 employees to 210 employees (a 139-employee proposed increase). Additional differences also exist between the parties with respect to the cost of materials and supplies and the costs associated with outsourcing. Finally, there are significant differences between the parties regarding the amount and proper accounting treatment of start-up costs.

The overall annual G&A expense estimates provided by the parties, including G&A compensation, outsourcing, and materials and supplies, are as follows:



SECI Opening –	\$19.7 million
CSXT Reply –	\$46.7 million
SECI Rebuttal –	\$22.4 million

See SECI Rebuttal e-workpaper “SFRR Operating Expense\_Reb.xls.” SECI’s Rebuttal costs reflect the addition of 27 G&A positions on Rebuttal.

In each of its decisions in *Duke/NS*, *Duke/CSXT*, and *CP&L*, the Board accepted the complainant’s G&A expenses on the basis of its observation that the complainant’s G&A staffing levels “are based on the experience of former senior-level railroad employees, [and] are reasonable and supported . . .” See *Duke/NS* at 156; *Duke/CSXT* at 459; *CP&L* at 269. Similarly, in its *PSCo/Xcel* decision, the Board characterized the complainant’s evidence on G&A staffing levels as “feasible,” as it was “supported by testimony from senior-level railroad employees.” *Id.* at 648.

SECI’s Opening and Rebuttal G&A evidence likewise is sponsored by four witnesses who have considerable expertise in matters relating to both operating and G&A expenses, and collectively have spent many years working for Class I and other railroads in positions of significant responsibility. SECI’s principal witness, Paul Reistrup, has 50 years of experience in railroad operations, engineering, and management, largely with CSXT and its predecessors as well as the Illinois Central. Mr. Reistrup also has served as President of both the Monongahela Railway and Amtrak. SECI witness Gary Hunter, who worked with Mr. Reistrup in evaluating CSXT’s Reply G&A evidence and in preparing SECI’s Rebuttal evidence, likewise has substantial experience in senior management

positions at the Southern Pacific and Western Pacific Railroads and with several regional railroads. Mr. Hunter has been involved in several railroad mergers, including UP/MKT, SP/DRGW and KCS's acquisition of its Mexican franchise, in which his work involved operations, marketing/traffic and organization/personnel. More recently, Mr. Hunter has worked extensively with BNSF in the areas of operations, marketing/traffic and organization/personnel, and his projects have also included analysis of large regional railroads and short-line holding companies in these same areas.

SECI's other two G&A witnesses include Joseph Kruzich, who has 38 years of experience in railroad accounting, executive administration, and information technology, including service as Vice President Telecommunications and Chief Information Officer of the Kansas City Southern Railway, and Philip Burris, a Senior Vice President of L.E. Peabody & Associates, Inc. with more than 30 years of consulting experience with regard to railroad economics. Mr. Burris, developed SECI's Opening and Rebuttal evidence regarding compensation levels for G&A personnel, material and supplies expenses, and non-Operating personnel training and recruiting costs.

In light of this wealth of real-world experience, SECI's G&A evidence is well-supported. It is also consistent with recent Board decisions in SAC rate cases.

**i. Staffing**

CSXT attempts to justify its proposal to nearly triple the SFRR's G&A staffing by "benchmarking" the SFRR against other allegedly comparable companies, particularly smaller Class I railroads such as KCS and two regional railroad holding companies, RailAmerica and Genesee & Wyoming ("GW"). The fact, however, is that there is no existing railroad or railroad holding company that is remotely comparable to the SFRR. Unlike its supposed "peers," the SFRR is a brand-new, start-up operation that does not have collective bargaining agreements, is not a product of mergers, and is able to take full advantage of current, state-of-the-art technology rather than gradually installing technology to replace human staff. Also unlike the railroads CSXT seeks to compare the SFRR with, a majority of the SFRR's traffic is overhead traffic which means the originating/terminating railroads perform a greater share of the marketing effort.

SECI rejects the management reconfiguration and most of the additional staffing (and additional compensation) proposed by CSXT for the SFRR and continues to reply upon the G&A staffing that it submitted on Opening, with the exception of the following items:

- (1) SECI agrees that two additional employees are needed to staff the marketing function.
- (2) SECI agrees that 12 additional employees are needed to staff the accounting function.
- (3) SECI agrees that 12 additional employees are needed to staff the law and administration function, including a nine-person police force for security staffing.

- (4) SECI agrees that one additional employee is needed to staff the information technology (IT) function.

Rebuttal Table III-D-4 below compares the parties' G&A staffing proposals for the SFRR, and shows the increase in staffing accepted by SECI on Rebuttal.

**REBUTTAL TABLE III-D-4  
COMPARISON OF G&A STAFFING BY SECI AND CSXT**

<b>Position</b>	<b>SECI Opening</b>	<b>CSXT Reply</b>	<b>SECI Rebuttal</b>	<b>Difference (CSXT vs. SECI Reb.)</b>
<b>Executive</b>				
President/CEO	1	1	1	0
Directors of Corporate Relations	2	2	2	0
Administrative Assistant	1	1	1	0
<b>Executive Dept. Total</b>	<b>4</b>	<b>4</b>	<b>4</b>	<b>0</b>
<b>Marketing &amp; Customer Service</b>				
VP Sales and Customer Service	0	1	0	1
AVP Mktg. and Customer Service	0	0	1	(1)
Administrative Assistant	0	1	1	0
Dir. of Mktg. and Customer Service	1	0	0	0
Dirs. of Mktg. & Sales	0	2	0	2
Mgrs. of Mktg. & Sales	4	9	4	5
Dir. Mktg. Administration	0	1	0	1
Mktg. Administration Mgrs.	0	3	1	2
Mgr. E-Commerce	0	1	0	1
Dirs. of Customer Service	0	2	0	2
Customer Service Managers	16	16	16	0
Customer Operations Managers	0	10	0	10
Dirs. Customer Business Systems	0	1	0	1
Customer Bus. Sys. Managers	0	3	0	3
<b>Marketing Dept. Total</b>	<b>21</b>	<b>50</b>	<b>23</b>	<b>27</b>
<b>Finance &amp; Accounting</b>				
<b>1. Executive/Treasury Function</b>				
VP Finance & Accounting/CFO	1	1	1	0
Administrative Assistant	1	1	1	0
Treasurer	1	1	1	0
Assistant Treasurer	1	1	1	0
Cash Manager	1	1	1	0
<b>2. Controller Function</b>				
Controller	1	1	1	0
Asst. Controller – Revenue	1	1	1	0
Revenue Analysts/Clerks	2	0	2	(2)
Director Revenue Accounting	0	1	0	1
Revenue Accounting Managers	0	3	2	1
Dir. Rail Billing & Collections	0	1	0	1
Mgr. Rail Billing & Collections	0	5	2	3
Customer Billing & Collections Specialists	0	21	0	21

Asst. Controller – Disbursements	1	1	1	0
Analyst/Clerk	1	0	0	0
Manager – Accounts Payable	0	1	1	0
Accounts Payable Clerical Staff	0	5	2	3
Payroll Manager	0	2	1	1
Asst. Controller – Taxes	1	1	1	0
Analyst/Clerk	1	0	0	0
Tax Accountants	0	4	2	2
Manager Property Accounting	0	3	1	2
Asst. Controller – Financial Reporting	1	1	1	0
Analyst/Clerk	1	0	1	(1)
Staff Accountants	0	4	0	4
<b>3. Budget/Purchasing Function</b>				
Dir. Budgets and Purchasing	1	0	1	(1)
Mgr. Budgets and Purchasing	2	0	2	(2)
Mgr. of Equipment Accounting	2	0	1	(1)
Mgr. Car Accounting	0	1	1	0
Car Accounting Analysts	0	3	1	2
Director Expenditure Recovery	0	1	0	1
Expenditure Recovery Mgrs.	0	4	0	4
Financial Planning & Analysis Manager	0	1	0	1
Director Purchasing	0	1	0	1
Buyers	0	6	2	4
<b>4. Internal Auditing Function</b>				
Director of Internal Auditing	1	1	1	0
<b>Finance &amp; Accounting Dept. Total</b>				
	21	78	33	45
<b>Legal &amp; Administration</b>				
<b>1. Legal Function</b>				
Vice President Law	1	1	1	0
Administrative Assistant	0	1	1	0
General Counsel	0	2	0	2
General Attorneys	3	0	3	(3)
Counsel	0	2	0	2
Paralegals	2	4	2	2
<b>2. Claims Function</b>				
Director – Claims	1	1	1	0
Manager – Claims	2	2	2	0
<b>3. Environmental Function<sup>33</sup></b>				
Dir. Environmental Operations	0	1	0	1
Environmental Managers	0	3	1	2

<sup>33</sup> The SFRR's Mechanical Department staffing includes two Managers of Testing and Environmental. See SECI Op. at III-D-20. CSXT places its Environmental staff within G&A.

<b>4. Security Function</b>				
Police Chief	0	1	1	0
District Commanders	0	2	0	2
Special Agents	0	13	8	5
<b>5. Human Resources Function</b>				
Director of Human Resources	1	1	1	0
Managers of Training <sup>34</sup>	2	2	1	1
Compensation & Benefits Mgr.	0	1	0	1
Manager of Compliance <sup>2</sup>	0	2	1	1
Employee Relations Mgr./Gen.	0	2	0	2
Compliance/Benefits Specialists	0	3	1	2
Labor Relations Generalist	0	1	0	1
Organization Development Specialist	0	1	0	1
Staffing & Recruiting Mgrs.	0	2	0	2
HRIS Specialist	0	1	0	1
Medical Doctor	0	1	0	1
<b>Legal &amp; Administration Total</b>	<b>12</b>	<b>50</b>	<b>24</b>	<b>26</b>
<b>Information Technology<sup>35</sup></b>				
VP of Information Technology	0	1	0	1
Director of Info. Tech.	1	0	1	(1)
IT Specialists	12	0	12	(12)
Applications Director	0	1	0	1
Applications Support Manager	0	4	0	4
Business Analysts	0	3	0	3
Data Base Manager <sup>36</sup>	0	1	1	0
Server Manager	0	1	0	1
Interface Support Manager <sup>22</sup>	0	1	0	1
Director IT Security	0	1	0	1
Security Technician	0	4	0	4
Technology Support Director	0	1	0	1
Support Technician	0	10	0	10
<b>IT Total</b>	<b>13</b>	<b>28</b>	<b>14</b>	<b>14</b>
<b>Total</b>	<b>71</b>	<b>210</b>	<b>98</b>	<b>112</b>

<sup>34</sup> On Rebuttal, SECI revises the titles and functions of these two Managers as described below in the text.

<sup>35</sup> In its Opening Evidence, SECI included the IT function within the Law & Administration department. CSXT creates a separate IT department on Reply. There is no need for a separate IT department; SECI has set forth the IT figures separately in this table solely for ease of review.

<sup>36</sup> The functions of this CSXT-proposed position are performed by the Database/Interface Support Manager that SECI adds on Rebuttal.

**(a) CSXT's Peer Railroad Comparisons  
Are Largely Irrelevant**

As briefly noted above, CSXT's G&A Reply evidence relies heavily upon comparisons between the SFRR and certain supposed "peer" railroads including KCS, RailAmerica, and GW. *See e.g.* CSXT Reply at III-D-51. CSXT's comparisons are not relevant, however, because the operations of these carriers are fundamentally different from the operations of the SFRR. Notably, a substantial percentage of the traffic of the SFRR (approximately 60%) is overhead traffic. As compared with local traffic and with traffic that either originates or terminates on the lines of a carrier, overhead traffic is substantially less "G&A-intensive." In addition, 48% of the SFRR's traffic is unit train coal traffic. Again, this type of traffic does not place the same demands upon a G&A staff as mixed commodity traffic. Neither KCS, RailAmerica nor GW has a traffic blend that is comparable to the SFRR in terms of the share of overhead traffic and unit train coal traffic.

In addition, RailAmerica and GW are holding companies, each of which owns at least 40 subsidiary short-line railroads (GW has 62). That corporate structure requires much greater coordination and oversight than the more straightforward corporate structure of the SFRR (which is a privately-owned company). KCS is likewise a poor choice as a "peer" for the SFRR. KCS has a much more expansive operation and rail system with a large number of terminals, many branch lines, and a traffic base consisting for the most part of carload traffic.



Another key indicator is the total personnel of the comparison railroads. KCS has six times the personnel, both RA and GW have over twice the personnel, as the SFRR (based on CSXT's estimates). This reflects the differences in management structure and operations between these companies. It should also be noted that KCS handles four times the gross ton miles as the SFRR. In addition, KCS operates 3-4 times the daily trains of the SFRR, and RailAmerica and GW by nature have more train starts than the SFRR on a daily basis. The commodity mixes of the SFRR and the other three carriers CSXT most frequently compares it with are also different, as shown in Table III-D-5 below.

<b>REBUTTAL TABLE III-D-5</b>				
<b>COMMODITY BREAKDOWN FOR THE SFRR AND CSXT'S ALLEGED "PEER" RAILROADS</b>				
	<b>SFRR</b>	<b>KCS</b>	<b>GW</b>	<b>RA</b>
<b>Coal</b>	48%	22%	12%	21%
<b>Intermodal</b>	11%	24%	0%	2%
<b>Gen. Freight</b>	41%	54%	88%	77%
<b>Total</b>	100%	100%	100%	100%

The differences described above account for the larger G&A staffs of KCS, RailAmerica, and GW.

SECI's G&A experts have developed the G&A staffing of the SFRR based on their analysis of the essential functions needed to operate this new railroad in a lean and streamlined manner. Class I railroads, on the other hand, tend to over-staff their marketing, sales, accounting, and overall management in a bureaucratic and overly stratified manner. Where budgets are developed for multi-billion dollar

railroads, the money is spent on staffing without the necessary attention to whether specific staffing is strictly required.

Moreover, many real-world railroads are organized in a suboptimal manner because they reflect long and complicated histories reflecting various mergers and acquisitions.<sup>37</sup> Those histories can create layers of unnecessary management that is not strictly required for a least-cost, most-efficient railroad. The SFRR will not be encumbered with any of that history and unnecessary complication.

SECI's G&A experts also note CSXT's extensive reliance on notions of maximum "span of control." *See, e.g.*, CSXT Reply at III-D-57 (the "typical" span of control of a director is 3 to 6 managers). There is no reason why a least-cost, most-efficient railroad should be bound by "typical" organizational structures that merely serve to create excessive layers of middle management, and result in a rigid, militaristic command structure that stifles creativity and flexibility.

Likewise, CSXT's evidence is based, in part, upon notions of required levels of prestige, rather than any strict functional need. For example, CSXT insists that the head of the Marketing department must be a Vice President because that is

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<sup>37</sup> As SECI noted in its Opening Evidence, the present-day CSXT is a product of mergers among numerous predecessors since the 1960's, including the Chesapeake & Ohio; Baltimore & Ohio; Richmond, Fredericksburg & Potomac; Western Maryland; Atlantic Coast Line, Seaboard Air Line; Seaboard Coast Line, Louisville & Nashville; Clinchfield; and Monon. The complex web of consolidated staffing and collective bargaining agreements resulting from these mergers doubtless influenced the thinking of CSXT's lead G&A witness, Joseph Schuppert, who has been with CSXT for over 20 years and is currently involved in "financial support of [CSXT's] Corporate and G&A Functions." CSXT Reply at IV-108.

common in real-world railroads, because the chief commercial officer must be able to “interact as a peer” with the Vice President–Transportation, and because an “organizational relationship of equals in the commercial and operating functions is a key characteristic of all railroads with annual revenue in excess of \$100 million.” CSXT Reply at III-D-55. However, CSXT never provides any explanation as to why a railroad cannot operate effectively unless the head of its Marketing department is viewed as a peer to the Vice President of Transportation.<sup>38</sup> SECI has developed its G&A staffing in order to ensure the least-cost, most-efficient operation of its SARR, not to match real-world tendencies of large railroads with huge percentages of local traffic and potential conflicts between department leaders.

With the foregoing as background, SECI addresses below the differences between the parties’ staffing for each department.

**(b) Executive Department/Board of Directors**

CSXT has accepted SECI’s proposed staffing for the Executive Department and Board of Directors for the SFRR. *See* CSXT Reply at III-D-53.

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<sup>38</sup> In prior SAC cases the Board has accepted SARR staffing where the marketing function is headed by a Director who reports to the Vice President–Transportation (the same staffing arrangement proposed by SECI), although the Director and his staff were included in the SARR’s Operating personnel rather than its G&A personnel. *See WFA/Basin* at 46. SECI Witness Gary Hunter notes that Montana Rail Link, a large regional railroad, has a marketing department headed by a Director who reports to the President of the company. Mr. Hunter believes it would be more appropriate for the SFRR’s Marketing & Customer Service Department to be headed by an Assistant Vice President who reports directly to the President rather than to the Vice President–Transportation, but either reporting arrangement is feasible

**(c)     Marketing & Customer Service Department**

In its Opening Evidence, SECI proposed a Marketing & Customer Service sub-department comprised of 21 individuals, including a Director of Marketing & Customer Service who reported to the SFRR's Vice President—Transportation, four Marketing Managers (divided along commodity lines), and 16 Customer Service Managers. SECI Opening at III-D-29 to 33. SECI explained that it would outsource much of the marketing function, as is common with many large regional railroads. *Id.* at III-D-30. SECI also noted that the staffing level for the SFRR's Marketing & Customer Service department was higher than that of SARR's from recent rate cases, in recognition of the fact that the SFRR handles a broader commodity mix, including more non-coal carload traffic, than the other SARRs.

On Reply, CSXT proposes to include a substantially larger staff for the Marketing & Customer Service function. Specifically, CSXT proposes to add 29 additional employees to this Department (for a total of 50). CSXT's restructuring of the department is based upon a rejection of outsourcing, and the promotion of the Director of Marketing & Customer Service to the role of Vice President of Marketing and Customer Service. CSXT also adds layers of unnecessary bureaucracy to the Marketing & Customer Service department. SECI rejects most of the CSXT's proposed changes to this department, and will address each disputed issue in turn.

First, with regard to outsourcing, there is no fundamental reason why a railroad of the size and nature of the SFRR could not outsource at least part of the marketing function. CSXT argues that outsourcing is improper because no real-world carrier with revenues of \$100 million or greater outsources marketing. But that observation does not mean that it is not possible for a least-cost, most-efficient railroad of the nature of the SFRR to engage in outsourcing where it would be cost effective. As an initial matter, SECI is not aware of any real-world carrier with revenues in excess of \$100 million that moves 50 percent of its traffic as an overhead carrier. This high share of overhead traffic greatly reduces the burden on the SFRR's Marketing & Customer Service department relative to that borne by real-world railroads.

In addition, even if CSXT were assumed to be correct in arguing that a given outsource provider such as Highroad Consulting may not currently be capable of handling a project of the size of the SFRR marketing function, that does not mean that such an entity would not be prepared to increase its staffing as necessary in order to handle a lucrative business opportunity with a long-term commitment from the client (*i.e.*, the SFRR).

Moreover, contrary to the *PSCo/Xcel* precedent that CSXT cites (CSXT Reply at III-D-54), SECI does not propose to outsource anything close to the entire marketing function, but instead, has proposed an in-house staff of 21 individuals for this department (revised upward to 23 on Rebuttal). In this regard, CSXT itself acknowledges that the Board has accepted partial outsourcing of the

marketing function where the alternative proposed by a carrier would “gold-plate” the SARR’s marketing system. *Id.* (citing *AEP Texas*). CSXT’s proposed 50-member marketing department is nearly three times the size of the 18-member “gold-plated” marketing and customer service department that BNSF had proposed in the *AEP Texas* case. *Id.* at 54 (“Because BNSF’s proposal here would ‘gold-plate’ the marketing department of the much smaller TNR, we use AEP Texas’ proposal [for outsourcing] – which recognizes that some in-house marketing position would be needed – as the best evidence of record.”).

Second, CSXT proposes to substantially increase the staffing of the Marketing & Customer Service department in light of its rejection of SECI’s outsourcing proposal. CSXT relies on comparative analyses of the responsibilities of each of the staff members in the SECI version of the department which were prepared under the assumption of outsourcing. CSXT’s criticisms are not applicable to a Marketing & Customer Service department that is constituted to work in conjunction with an outside marketing entity and with the other, connecting railroads involved in moving a majority of the SFRR’s traffic.<sup>39</sup>

SECI discusses each of CSXT’s proposals to add new positions to the SFRR’s G&A staff below.

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<sup>39</sup> Even in the absence of any outsourcing, CSXT’s proposed staffing levels for the Marketing & Customer Service Department (a total of 50 individuals) would be excessive for a railroad of the nature of the SFRR.

Vice President–Marketing and Customer Service.<sup>40</sup> There is no reason why the marketing function for a railroad with the kind of traffic group the SFRR has (with most of its traffic being overhead and other cross-over traffic, such that the connecting railroads have a substantial role in connection with its marketing) must be headed by a separate vice president. The Board has accepted SECI's Opening approach of having a Director of Marketing & Customer Service head this function, with that individual reporting to the Vice President-Transportation. *WFA/Basin at 46*. Some real-world railroads, such as Montana Rail Link ("MRL"), use a Director-level position to head their marketing departments. In MRL's case, the Director of Marketing Reports to the President.

Given the number of employees in the SFRR's Marketing and Customer Service Department (now 23, with the two additions noted below), SECI has upgraded the department head to the Assistant Vice President level, and to preserve his (or her) independence from the Transportation Department, now has this position report directly to the President (which is consistent with the approach at MRL). SECI also agrees with CSXT that the department head should be assigned an Administrative Assistant, given the number of employees in this department. Thus SECI has added changed the title of the head of the Marketing &

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<sup>40</sup> In its G&A staffing exhibit (Reply Exhibit III-D-1) CSXT refers to this position as the Vice President *Sales & Customer Service*, but in the Reply Narrative the position is referred to as the Vice President *Marketing & Customer Service* (*id.* at III-D-55-56).

Customer Service Department to Assistant Vice President and added one Administrative Assistant position to the department.

Six additional Directors. CSXT has proposed a group of seven Directors for this department, including two Directors of Marketing & Sales, a Director of Marketing Administration, two Directors of Customer Service,<sup>41</sup> and a Director of Customer Business Systems. This organization provides redundant layers of management. SECI's G&A's experts are at a loss to understand what these additional Directors would do, particularly given CSXT's proposed heavy additional layer of Manager positions.

Twenty-One Additional Managers. Rather than the 20 Managers that SECI proposed (*i.e.*, four Marketing Managers and 16 Customer Service Manager employees), CSXT has proposed a group of 42 Managers for this department, including nine Managers of Marketing & Sales, three Marketing Administration Managers, one Manager of E-Commerce, 16 Customer Service Managers (as SECI has proposed), ten Customer Operations Managers, and three Customer Business Systems Managers.

SECI accepts CSXT's proposal to add one Marketing Administration Manager (who also handles the e-commerce function<sup>42</sup>) to the SFRR's marketing

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<sup>41</sup> The 16 Customer Service Manager employees cover six positions, three of which are staffed 24/7. SECI Opening at III-D-32. There is no need for even one Director to supervise six positions, much less the two proposed by CSXT.

<sup>42</sup> As described by CSXT, e-commerce involves "a web-based customer interface for functions like tracking shipments and billing" (CSXT Reply at III-D-



staff, but rejects CSXT's additional proposals as inconsistent with the nature of the SFRR as a least-cost, most efficient railroad. For example, CSXT proposes to add a Director of Customer Service and ten Customer Operations Managers in addition to the 16 Customer Service Managers proposed by SECI (a number CSXT accepts). CSXT Reply at III-D-58-60. CSXT's explanation for adding these positions makes absolutely no sense, and if anything, SECI has over-staffed the Customer Service function. Approximately 51 percent of the SFRR's traffic is coal traffic and 75 percent of the SFRR's traffic is cross-over or other interline traffic that is controlled by CSXT or other railroads. This means the total number of customers is relatively small compared with a large Class I railroad, and that the SFRR will have little customer service or marketing responsibility for  $\frac{1}{2}$  to  $\frac{3}{4}$  of its traffic. The Customer Service Managers can easily cover the day-to-day train and car-tracking functions and assist in other marketing areas as well. The SFRR has plenty of people to handle customer service and marketing without the additional personnel proposed by CSXT.

Finally, CSXT proposes to add a Director of Customer Business Systems and three Customer Business Systems Managers. *Id.* at III-D-60-61.

CSXT asserts that these additional positions are needed to supplement the RMI

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58). In today's work environment, in which all marketing personnel are computer-savvy and have access to the company's shipment tracking and billing systems, there is no need for a separate manager whose sole responsibility involves e-commerce. Moreover, one of the responsibilities of the SFRR's six Customer Service Manager positions (three of which are staffed 24/7, resulting in a total of 16 employees – a number that CSXT accepts) is to assist customers with shipment status and tracking.

technology applications used by the SFRR. These positions are unnecessary because they duplicate positions in the IT Department, as discussed below. In addition, the Customer Service personnel can be trained in the data entry and reporting aspects of the RMI application, which are not particularly complex.

In short, CSXT's proposed staffing of the Marketing & Customer Service function vastly exceeds the needs of a stand-alone railroad, as the Board's past holdings on G&A staffing confirm. CSXT's proposal ignores the nature of the SFRR's traffic group, and the large proportion of its traffic that is interlined with other railroads (particularly CSXT) which will bring their own marketing and customer service staffs to bear on issues involving the marketing and tracking of the traffic handled by the SFRR. It also assumes the SFRR will not out-source any non-technological marketing functions. SECI's addition of two positions to its Opening staffing for the Marketing & Customer Service is more than adequate to enable the SFRR to cover these functions.

**(d) Finance and Accounting Department**

In its Opening Evidence, SECI proposed a Finance and Accounting Department consisting of 21 employees headed by the Vice President of Finance & Accounting (supported by an Administrative Assistant). SECI Opening at III-D-33-37. The department includes a Treasurer, an Assistant Treasurer, a Cash Manager, a Controller (supported by four Assistant Controllers and five Analyst/Clerks), a Director of Budgets and Purchasing (supported by two Managers of

Budgets/Purchasing and two Managers of Equipment Accounting), and a Director of Internal Auditing. *Id.*

On Reply, CSXT creates an enormous Finance and Accounting Department consisting of a remarkable 78 individuals. CSXT Reply at III-D-61-76. CSXT's proposed Finance and Accounting Department is disproportionate to the tasks required, and significantly, is itself larger than the entire G&A staff accepted by the Board in any prior coal rate case before the agency. *Cf. Duke/NS* (63 total G&A with 24 in Finance & Accounting); *Duke/CSXT* (59 total G&A with 21 in Finance & Accounting); *CP&L* (63 total G&A with 24 in Finance & Accounting); *PSCo/Xcel* (51 total G&A with 16 in Finance & Accounting); *AEP Texas* (66 total G&A with 21 in Finance & Accounting – not including IT); *Otter Tail* (55 total G&A with 25 in Finance & Accounting); *TMPA* (63 total G&A with 23 in Accounting/Finance); *WFA/Basin* (39 total G&A with 15 in Finance & Accounting).

In past cases, the Board has rejected carrier efforts to introduce huge numbers of employees into SARR Finance & Accounting departments, but CSXT has ignored that precedent in gold-plating its version of the SFRR. *See, e.g., AEP Texas* at 55-57 (rejecting additional employees for the financial reporting function, the revenue analysis/budgeting function, and the real estate function); *TMPA* at 681-83 (rejecting effort to add 37 members to the finance/accounting staff); *WFA/Basin* at 44-45 (rejecting effort to add employees for the financial reporting function, the budgeting and purchasing function, the real estate function, and 10

miscellaneous clerks, analysts, managers, and directors); and *Otter Tail* at C-9 (rejecting effort to revenue accounting and financial reporting employees, and revenue analysts to handle “such matters as overcharging, undercharging, miscoded bills, etc.”). CSXT’s evidence should be rejected on these grounds as well.

Much of the difference between the parties’ staffing estimates relates to the Controller function. CSXT agrees with SECI’s proposal to employ a Controller and four Assistant Controllers, but CSXT characterizes SECI’s reliance on a group of five supporting Analysts/Clerks for the Assistant Controllers as “ludicrous.” CSXT Reply at III-D-64. CSXT claims that SECI’s staffing proposal for the Controller’s office is improper because SECI does not provide any benchmarks or comparable railroad data to support this staffing, and CSXT contends that SECI’s staff “would be unable to comply with basic SEC regulations, including the Securities Act filing and registration requirements and Sarbanes-Oxley (SOX) requirements and procedures.” *Id.* CSXT concedes that the SFRR would not be a publicly traded company, but argues that the SEC/SOX regulations would apply to the SFRR if it chose to issue public debt. *Id.* Stated differently, CSXT has hypothesized a set of requirements for the SFRR based upon an assumption that is absent from the corporate structure of the railroad as posited by SECI.

CSXT addresses the four areas of responsibility for the four Assistant Controllers separately. SECI will respond to each CSXT argument in turn.

Revenue Accounting. CSXT proposes that the Assistant Controller – Revenue will be supported by: (i) a Revenue Accounting Group consisting of a Director and three Managers of Revenue Accounting; and (ii) a Rail Billing and Collection Group including a Director, five Managers, and twenty-one Analysts (*i.e.*, a total of 31 employees working under the Assistant Controller – Revenue). CSXT claims that this staffing is necessary “to ensure the accurate and timely reporting of all operating revenue; to resolve issues and exceptions on interline statements, waybills, and supplemental bills; to interact with auditors assessing internal controls pursuant to SOX 404; and to monitor and estimate all revenue-related and receivable reserves pursuant to Financial Accounting Standards (FAS) guidelines.” *Id.* at III-D-65-66.

CSXT also asserts that the staffing of the Rail Billing and Collection Group is more efficient than the rail billing and collection staff for the DM&E, and that this staffing is necessary for “the preparation, invoicing and collection of all freight transportation charges as well as all incidental charges such as demurrage, switching, and various other services as prescribed by tariff or contract.” *See* CSXT Reply at III-D-66. CSXT also contends that the Rail Billing and Collection Group would be responsible for “processing customer shipping documents to create waybills; managing waybill exceptions, supplemental bill exceptions, and reconciliations; handling collection calls; processing customer overcharge claims; and testing and maintaining SOX 404 key controls . . . .” *Id.*

CSXT's proposed staffing of the Revenue Accounting Function is excessive because coal moves in unit trains and is billed by the trainload, not by the car, and approximately 75 percent of the SFRR's traffic is controlled by other railroads. This means there are relatively few customers for the SFRR to invoice, notwithstanding the large amount of revenue generated by the traffic. Thus the SFRR needs only a small revenue accounting staff. However, SECI has concluded that a total of four Managers should be added to the Assistant Comptroller-Revenue's staff to provide adequate personnel to staff the Revenue Accounting and Rail Billing & Collections group (even though most of the actual billing is performed by connecting railroads, SECI still needs to monitor and audit the billing). Two of these managers would be assigned to each function.

Disbursements. CSXT argues that SECI's proposed staffing of the Disbursement function (*i.e.*, one Assistant Controller and one Analyst/Clerk) would be insufficient. CSXT Reply at III-D-66 to 67. CSXT proposes that the Assistant Controller should be supported by one Manager and five clerical staff. *Id.* at III-D-67. CSXT argues that this staffing is necessary because of recent Hackett target benchmarks of 9.3 staff per \$1 billion of revenue. *Id.* CSXT adds that these staff members would be responsible for "tasks including processing invoices, mailing checks or handling wire transfers, issuing IRS Form 1099s to contractors, handling account reconciliations, and processing expense reports." *Id.* This proposed staffing again is excessive given the nature of the SFRR's traffic group which limits functions like disbursements, invoicing, transfers, *etc.* The nature of the traffic

group makes the SFRR very different from any other Class I, so using benchmarks such as the Hackett benchmark is inappropriate. Moreover, the SFRR starts out with state-of-the art, user-friendly technology which further reduces the need for the kind of accounting staff most Class I railroad have.

CSXT also argues that the SFRR would require two Payroll Managers reporting to the Assistant Controller–Disbursements. *Id.* In particular, CSXT states that the Paychex processing system “only processes payroll; it does not manage the payroll function.” According to CSXT, additional staffing (over and above the Assistant Controller and Analyst/Clerk that SECI proposed, and over and above the additional Manager and five clerical staff that CSXT would have report to the Assistant Controller – Disbursements) would be necessary to: (i) respond to employee questions; (ii) coordinate with Paychex on garnishment, child support, and tax liens; (iii) coordinate employee changes; (iv) answer questions from management, and a variety of other functions. This staffing is excessive because the SFRR has less than 1,200 employees, which is quite small in comparison to other Class I railroad and even RailAmerica and GW, each of which has several thousand employees. Today’s software applications also make it easier to manage the Paychex system than in the past.

SECI does acknowledge, however, that the staffing proposed on Opening for the accounts payable and payroll functions is a little thin. Accordingly, on Rebuttal SECI has added one Manager-Accounts Payable and one Payroll Manager to assist the Assistant Controller-Disbursements in the performance of his

functions, as well as two Accounts Payable Clerks.<sup>43</sup> However, one of these clerks would replace the separate Analyst Clerk position that SECI provided on Opening, as there is no need for two separate kinds of clerical personnel. Thus the staffing of the Disbursement accounting function should be increased by three from that provided on Opening (from two to five employees).

Tax Function. SECI staffed its Tax Function with an Assistant Controller – Taxes and an Analyst/Clerk working in conjunction with outside tax preparation services. CSXT contends on Reply that this staffing is insufficient because of the large number of tax returns that the SFRR will prepare each year, and because this “will require staff to provide information to outside vendors, respond to information requests, review draft tax returns, and generally oversee the outside vendors’ work.” CSXT Reply at III-D-68-69. CSXT also argues that SECI’s staffing is inadequate because the SFRR would need staff to respond to state and federal audits, and “to prepare the monthly transporter, terminal operator, and exporter returns required by many states.” *Id.* (“SECI did not provide for any outside vendors to handle this function.”). On the basis of these arguments, CSXT insists that “at least four dedicated Tax Accountants would be required for the SFRR to manage preparation of necessary tax forms.” *Id.*

CSXT’s proposal is excessive in terms of the staff needed for preparation of monthly state and federal tax forms and related follow-up. Most

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<sup>43</sup> SECI also concurs with CSXT (*id.* at III-D-67 n. 70) that the amount per employee for Paychex payroll processing should be increased from \$44 to \$50 per employee.



such forms are standardized and repetitive, which commends them to computer processing. Also, a month is available between most filings to plan and prepare for the next filing. If additional help is needed to respond to audits, etc., outside firms can be used for assistance – although this is unlikely given the limited number of repetitive forms due each month.

CSXT also proposes to add three Managers of Property Accounting, who would report to the Assistant Controller – Taxes, to perform the accounting function for fixed assets. CSXT Reply at III-D-70. CSXT suggests that, although the SFRR will use a computerized system to track physical assets and asset replacements, this additional staffing is necessary because of the need to set up assets in the computer system and to evaluate that the asset entry is correct. *Id.* CSXT also argues that monitoring will be required for individual construction projects, and that staff must prepare account reconciliations and analysis for newly constructed assets, as well as life studies for various classes of assets. *Id.*

CSXT's proposed additional staffing is not required because, first, the SFRR will construct all assets needed to operate during its first ten years of existence, and thus will not be undertaking any new construction projects during this period. The SFRR also has limited assets that require monitoring – a total of 171 locomotives in 2009, only 918 freight cars (most railcars used to move the SFRR's traffic are provided by other railroads), and a fixed number of buildings. Few if any of these assets are likely to be retired during the ten-year DCF period.

Moreover, the substantial interval between required life studies (three to six years) enables these studies to be planned and scheduled well in advance.

On Rebuttal, SECI agrees that the staff support for the Assistant Controller-Taxes needs to be beefed up a little, given the relatively large number of state tax returns the SFRR must file. Accordingly, SECI has added two Tax Accountants and one Manager of Property Accounting to this staff. (However, SECI has removed the Analyst/Clerk assigned to the Assistant Controller-Taxes, as CSXT evidently does not feel this position is necessary.) This increases the staffing for this function from two, as provided on Opening, to four.

Financial Reporting. SECI proposed on Opening that the SFRR's Financial Reporting would be performed by an Assistant Controller supported by one Analyst/Clerk. SECI Opening at III-D-35-36. CSXT argues that this staffing is insufficient and that it would be necessary for the SFRR's Assistant Controller – Financial Reporting to be supported by four Staff Accountants (*i.e.*, an increase in head count of three relative to SECI's Opening Evidence, as CSXT does not see a need for the Analyst/Clerk). CSXT Reply at III-D-73 to 74. SECI continues to believe that a total staff of two (including the Analyst/Clerk) is sufficient for this function, and that an additional four Staff Accountants are unnecessary.

CSXT bases its argument on the status of the SFRR as a Class I railroad with over \$6 billion in debt. According to CSXT, the Financial Reporting function would be responsible for the monthly closing of books, STB reporting, an annual financial statement audit, benefit plan reporting, SEC reporting, SOX

compliance, bondholder reporting, and accounting research. *Id.* CSXT's proposal to add three additional accountants to handle these functions is unnecessary because, despite the railroad's substantial debt, it is still small compared with most Class I's and the level of financial reporting required does not vary significantly with the amount of debt (all of which would be incurred for one purpose: financing the initial construction of, and acquisition of equipment for, a brand-new railroad. A new railroad does not need the complicated accounts and financial reporting of a railroad like CSXT, which has many debt instruments incurred over a period of time for various purposes.

In addition to the oversized support staffing for the four Assistant Controllers already identified by SECI, CSXT also proposes to add other staffing to the Finance & Accounting Department to supplement the staffing proposed by SECI for the Budgets and Purchasing function.<sup>44</sup>

In its Opening Evidence, SECI proposed to staff the budget and purchasing function with a Director of Budgets and Purchasing, two Managers of Budgets and Purchasing, and two Managers of Equipment Accounting. SECI Opening at III-D-36-37. CSXT proposes to completely rearrange this staffing and add 12 employees, increasing the total staff from this function from five to 17. In particular, CSXT insists that one of the Managers of Budgets and Purchasing should be a Financial Planning & Analysis Manager completely devoted to

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<sup>44</sup> CSXT did accept SECI's proposed staff of one for the Internal Auditing function. CSXT Reply at III-D-76.

overseeing the budget and performance reporting process; that there should be a separate Director and staff for “expenditure recovery,” and that additional purchasing staff is necessary. *Id.* at III-D-71-72 and 75-76. Specifically, CSXT appears to contend that the SFRR should include a separate Purchasing Department headed by a Director with a staff of six buyers. *Id.* at III-D-76.

SECI disagrees with CSXT’s absurd re-arrangement of the staffing for the Budgets and Purchasing function. First, both parties have already provided for a Director of Budgets and Purchasing; there is absolutely no need for two additional Director-level employees to handle two sub-functions (expenditure recovery and purchasing). The two Managers it proposed on Opening to oversee the budgeting and purchasing function are perfectly adequate. Although SECI agrees that two Buyers should be added to staff the purchasing function adequately, it disagrees with CSXT’s other proposed additions. Individual positions proposed by CSXT are discussed below.

Equipment Accounting. SECI proposed two Managers of Equipment Accounting in its Opening Evidence, one of whom would oversee outsourced equipment repairs, and one of whom would manage car hire and receivables issues for the SFRR using RMI as a car hire system. SECI Opening at III-D-36. On Reply, CSXT argues that more staffing is needed for the second function because the RMI system “does not run on autopilot” and because a “single person cannot handle the administrative burden of the car accounting function. . . .” CSXT Reply at III-D-71-72. On the basis of this argument, CSXT insists that the SFRR would

need not only two Managers of Equipment Accounting, as SECT had proposed, but in addition one Manager of Car Accounting and three Car Accounting Analyst positions. *Id.* at III-D-72.<sup>45</sup>

SECI concurs that, given the SFRR's traffic mix which includes carload traffic, more resources are needed for the Car Accounting function. Accordingly, one of the two Managers of Equipment Accounting should be re-designated as a Manager of Car Accounting, and one Car Accounting Analyst should be added to assist this Manager in keeping track of car hire, time and mileage for the cars used by the SFRR, and billing for car repairs. There is no need for two Managers of Equipment Accounting devoted to other equipment besides cars, or for two additional Car Accounting Analysts. Two people (the Manager and one Analyst) are sufficient to handle car accounting matters for a railroad the size of the SFRR, particularly because the cars are leased and the lessors will help with certain reporting and other car accounting functions.

Expenditure Recovery. CSXT adds a Director and four Managers to handle issues associated with "expenditure recovery." CSXT Reply at III-D-71. CSXT states that the SFRR would require sufficient staff to "bill a variety of projects such as DOT crossing projects, damage to railroad property, scrap billings, pool billings, and other miscellaneous billings, and to ensure that billings are issued in compliance with federal and state regulations." *Id.* This proposed staffing is

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<sup>45</sup> CSXT comments that RailAmerica has four positions in this area (*id.*). This is actually one less than CSXT proposes for the SFRR

unnecessary, as it is duplicative of the functions performed by the Assistant Controllers- Revenue and Disbursements and their teams. The kinds of project or events that CSXT cites as requiring billing are one-time events, and the SFRR's other accounting staff can easily manage this kind of infrequent billing.

Financial Planning and analysis. CSXT proposes to add a Financial Planning & Analysis Manager, on the ground that the SFRR needs an employee "completely devoted to overseeing the budget and performance reporting process." *Id.* at III-D-75. However, this is exactly the job of the Director of Budgets and Purchasing proposed by SECI (a position CSXT abolishes without explanation). If the Director is retained, there is no need for a redundant Manager to perform the same function.

Purchasing. CSXT's proposed staffing of seven for the purchasing function (a Director and six Buyers) is also oversized. There is no need for a separate Director of Purchasing, in addition to the Director of Budgets and Purchasing who can easily handle both functions. Both MRL and Pan Am Railways have one key manager or director for this function. SECI does agree with CSXT that Buyers are needed to acquire materials and equipment, but two Buyers should be adequate rather than the six proposed by CSXT. The SFRR is a new railroad, with new track and bridges and new locomotives, cars and other equipment, so equipment and track-material purchases should be limited during the first five years of its existence. Purchases are limited on a daily basis, and the SFRR does not have anything remotely approaching the purchasing demand of a

major railroad like CSXT. The two Buyers SECI has provided on Rebuttal should be able to handle the railroad's ongoing fuel, material and small-equipment purchases.

**(e) Law and Administration Department**

On Opening, SECI proposed a Law & Administration Department for the SFRR comprised of: (i) a Vice President Law & Administration; (ii) three staff attorneys; (iii) two paralegals; (iv) a Director of Claims (supported by two Managers of Claims); and (v) a Director of Human Resources (supported by two Managers of Training and relying largely upon outsourcing). SECI Opening at III-D-37-38. The total headcount proposed for this department (not including the 13 individuals staffing the IT function, discussed below) was 12. On Reply, CSXT proposes a much larger Legal & Administration Department consisting of 50 individuals, plus a separate, additional 28-member IT Department headed by its own Vice President.

There are four principal differences between SECI's Opening and CSXT's Reply staffing of the Law & Administration Department (excluding for the moment the IT function): (i) CSXT's addition of one attorney and two paralegals to the SECI staffing proposal (and its addition of nearly \$1.5 million in outside legal fees); (ii) CSXT's addition of a Police Chief, two District Commanders, and 13 Special Agents; (iii) CSXT's addition of an Environmental Director (supported by three Environmental Specialists); and (iv) CSXT's inclusion of a 17-member

Human Resources group. CSXT's staffing is excessive and in large part unnecessary.

Attorneys/Paralegals. SECI proposed that the SFRR's Vice President–Law would be assisted by three General Attorneys and two Paralegals, and would incur an annual cost for outside law firms of \$575,000. SECI Op. at III-D-37-38 and Op. e-workpaper “SFRR G&A Outsourcing.xls.” On Reply, CSXT claims that SECI has significantly understated the SFRR's legal expenses and staffing needs. CSXT Reply at III-D-77 to 80.<sup>46</sup> In particular, CSXT claims that the SFRR would need additional resources to ensure compliance with FRA, TSA, environmental, and STB regulations and that the SFRR would require legal expenditures as a defendant in maximum rate reasonableness cases. *Id.* On the basis of its various arguments, CSXT proposed to staff the legal function with two General Counsel and two Attorneys (who would replace the three general Attorneys provided by SECI) and four paralegals, and to require the expenditure of \$2.075 million in outside counsel fees. (The net increase proposed by CSXT is one attorney and two paralegals.)

CSXT's proposed staffing increase is unnecessary. CSXT assumes that the SFRR would have a greater need for in-house counsel and paralegals primarily because it is a regulated industry. However, the SFRR would not face the

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<sup>46</sup> CSXT has, however, accepted SECI's proposed staffing for the claims function. *Id.* at III-D-80.



prospect of rate litigation,<sup>47</sup> and other Class I railroads (along with the AAR) would take the lead on industry-wide regulatory issues involving the STB or FRA. As a new railroad the SFRR does not have any past spills or ongoing environmental issues to deal with from a legal standpoint (unlike a railroad such as CSXT). SECI has already provided a larger staff of in-house attorneys and paralegals than the Board deemed necessary in *AEP Texas* at 57 (VP/General Counsel, two attorneys, one paralegal ) and *WFA/Basin* at 45 (same), in recognition that the SFRR operates in more states than the SARRs in those cases.

Outside Counsel. CSXT proposes to increase the annual budget for outside counsel from the \$575,000 that SECI provided on Opening to \$2.075 million, on the basis of a published survey showing that “typical United States Companies” have legal spending split of 40%-60% between inside and outside counsel. CSXT Reply at III-D-79-80. However, the SFRR is not a typical United States company, but a streamlined, start-up operation with new facilities.

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<sup>47</sup> Rate litigation might occur if the SFRR and its interline partners raise rates substantially (as CSXT did with SECI’s rates after the parties’ rail transportation contract expired), but the SFRR’s projected rates and revenues are based on indexing current rates based on existing contract price-adjustment mechanisms or standard cost indices. There is no reason to assume rate litigation would occur in these circumstances.

CSXT also notes (*id.* at 80) that utility companies, which are also regulated, employ a substantially higher number of in-house lawyers than SECI proposes for the SFRR. However, utilities are much more heavily regulated than railroads, with annual prudency reviews and the ability to increase rates only by filing a rate case before a state public service commission.

SECI notes that it made an arithmetic error in calculating the annual budget for outside counsel. The budget was supposed to have been calculated on the same basis used (and accepted by the Board) in *WFA/Basin*, namely \$75,000 for counsel for federal matters and \$50,000 per state for local counsel. The SFRR operates in 12 states,<sup>48</sup> so the annual budget of outside counsel should have been \$675,000 ( $\$50,000 \times 12 + \$75,000$ ), not \$575,000. This correction has been made on Rebuttal.

CSXT attempts to justify its far higher budget for outside counsel partly on the basis that the SFRR is subject to the Federal Employers Liability Act (“FELA”) which requires the expenditure of significant litigation resources. CSXT Reply at III-D-78. However, CSXT has accepted SECI’s proposed three-person in-house claims staff (which is much smaller than the claims staff of any Class I railroad including KCS) as well as SECI’s proposed annual cost for outsourcing claims investigations. *Id.* at III-D-80. There appears to be a disconnect between CSXT’s proposed annual budget for outside counsel and its proposed annual budget for claims handling (the claims staff spends most of its time on FELA claims). If SECI’s proposed claims staff and outsourcing budget is sufficient for the SFRR’s needs, there is no reason why its outside counsel budget (which was calculated using the same methodology accepted in *WFA/Basin*) is insufficient.

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<sup>48</sup> This excludes the District of Columbia, in which the SFRR has a very small amount of grade-separated track. Any non-federal legal work in D.C. can be handled by local counsel for neighboring Maryland and Virginia. SECI experts also note that the SFRR’s route-miles in Indiana and Alabama are also quite small, and the outside-counsel budget for these states is probably overstated.

Security Staff. CSXT argues on reply that the SFRR would require a security force because it transports 53,000 carloads of TIH traffic and because it operates in eight High Threat Urban Areas, as defined by the TSA. CSXT Reply at III-D-81-82. SECI concurs with CSXT's suggestion that security staffing is needed, but CSXT's proposed staffing of 16 individuals (a number whose derivation CSXT does not explain) is unnecessary. Instead, the SFRR's security needs can be met with a single Police Chief (as CSXT has proposed) and eight Special Agents. This staffing would be sufficient to cover the SFRR's system. Two of the Special Agents would cover the portion of the West Division between Princeton, IN and Atlanta, GA; two would cover the West Division territory between Atlanta and Bostwick, FL; two would cover the portion of the East Division from Richmond, VA north; and the final two would cover the East Division territory between Richmond and Folkston, GA. The Special agents are on call 24 hours a day. The Chief of Police or a Special Agent can also call in local public police forces, should additional assistance to handle a particular incident be required. This is a common practice for smaller railroads, and over the years even the Class I railroads have cut back on in-house special agents and rely increasingly on local police.

Environmental Staff. Notwithstanding the fact that SECI already proposed that the SFRR's Mechanical Department would employ two Managers of Testing and Environment (which CSXT includes in its Operating staffing proposal), CSXT contends that it is also necessary for the SFRR's Legal & Administration

Department to include an additional Director of Environmental and Hazardous Material Systems, a Manager of Infrastructure Protection and Chemical Safety, and two Managers of Environmental Field Services. Reply Nar. at III-D-83-86. This additional staffing is redundant and unnecessary because the SFRR is a new railroad with a first-class track structure, and does not have ongoing environmental issues form the past like Class I railroads. Outside assistance would be more economical for infrequent special circumstances, such as a derailment involving spillage of toxic substances.

Human Resources Staff. On Opening, SECI provided a Director of Human Resources and two Managers of Training to staff the Human Resources (“HR”) function, with assistance from Optimum Solutions HR technology. On Reply, CSXT accepts SECI’s proposal to use the Optimum Solutions technology to assist in managing the HR function (albeit at a much greater cost than SECI had provided), but nevertheless proposes to substantially increase the HR staffing to a Director and fifteen staff members, including a full-time medical doctor. CSXT Reply at III-D-87-90.<sup>49</sup> CSXT’s proposal to increase the HR staffing to 16 total individuals is unpersuasive and should be rejected. In particular, CSXT has provided separate staffing for the training, compensation and benefits, compliance,

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<sup>49</sup> CSXT relegates the bulk of its discussion of its proposed HR staffing to a chart in Reply Exhibit III-D-1.

and medical functions, in addition to out-sourcing of various functions.<sup>50</sup> This kind of staff may be needed for a railroad that has thousands of employees, but it is not needed for a railroad the size of the SFRR, with less than 1,200 employees. Both MRL and Pan Am Railways, which have comparable numbers of employees to the SFRR, show only two in-house staff personnel for their HR departments.

There is no need for the SFRR to employ a company doctor, as CSXT proposes (*id.* at III-D89). Today's railroads do not employ in-house medical personnel, finding it to be more efficient (less expensive) to establish a relationship with outside clinics to handle incidents beyond first aid for their employees. These clinics handle workers compensation and other medical insurance claims, as well as required physicals.

On Rebuttal SECI has concluded that the HR Department requires a total of four employees, or one more than posited on Opening, and that the functions of the two Managers (who report to the HR Director) should be separated. One Manager should be designated a Manager of Training, Development, Staffing and Recruiting, and the other should be designated a Manager of Compliance, Employee and Labor Relations/Benefits. The latter Manager Compliance/ Employee Relations/Benefits should be assisted by a

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<sup>50</sup> SECI notes that CSXT added \$20 per employee for outsourced employee assistance. See CSXT Reply e-workpaper "CSXT View of SFRR Personnel.xlsx," tab "Outsourced Services." CSXT provided no explanation whatsoever for this addition, and it should be rejected by the Board.

Compliance/Benefits Specialist who would perform functions related to HR compliance and employee benefits.

This HR staff is perfectly adequate for a newly-formed railroad with less than 1,200 employees. The Manager of Training, Staffing, Development and Recruiting can plan and keep a file of potential employees as job openings occur (the railroad industry today has lots of ex-employees looking for jobs in all departments). An outside recruiter can be used for executive-level positions, which do not open up frequently. The Manager of Compliance, Employee and Labor Relations/Benefits is responsible for all labor relations matters, with administrative staff support from the Compliance/Benefits Specialist. Labor relations matters can be handled by two individuals since the SFRR (unlike other Class I railroads) is non-unionized.

**(f) Information Technology**

CSXT suggests that the SFRR would require an IT staff of 28 people to provide the minimum level of service required by a railroad of its size and complexity. CSXT Reply at III-D-90-98. SECI's IT expert, Joseph Kruzich, agrees with CSXT's experts that the volume of data processed by the company is a key in determining its staffing, software and hardware requirements, but disagrees that more than 14 people are needed to staff the SFRR's IT function.

On Opening, Mr. Kruzich developed the SFRR's IT requirements based on the unique characteristics of this SARR, including its operation of unit trains carrying a single bulk commodity (coal) and the fact that most non-coal

traffic moves overhead on the SFRR with multiple-car blocking. The SFRR moves these cars through to the appropriate off-line junction, thereby minimizing the need for intermediate classification switching. This combination of factors, which is unique to the SFRR, greatly reduces the complexity of the computer systems and staffing required to support operations in comparison with other Class 1 railroads. Accordingly, Mr. Kruzich proposed an IT staff of 13, consisting of a Director and 12 IT Specialists who would perform various functions, as described at SECI Opening III-D-39-40. Mr. Kruzich strongly disagrees with CSXT's proposal to substantially increase the SFRR's IT staffing, and concludes that his Opening staffing is adequate with the addition of one Database/Interface Support Manager, as discussed below.

CSXT states that staffing for a least-cost, most-efficient IT organization is determined by a variety of factors, including the geographic scope of company operation, number of employees needing IT support, communication requirements, volume of data processed, and the specific hardware and software used to run the business. CSXT Reply at III-D-90. Mr. Kruzich agrees with this as a general proposition, and staffed the SFRR's IT function with these points in mind. However, it is evident that in designing more complex IT systems and staffing for the SFRR, CSXT's experts failed to recognize the relative simplicity of the SFRR operations, but rather designed an IT system that is similar to that of a typical Class I Railroad like CSXT. The computer system requirements for a typical Class I railroad are very complex due to the very large number of customers served, the

large number of commodities handled, the need to accommodate thousands of different origin and destination pairs, the different railcar types required, the need for extensive yard operations to sort and block cars and support local switching activities, and the need to keep track of service commitments to customers on an individual car basis. Some of these conditions exists on the SFRR, but not nearly to the extent as on the real-world CSXT.

CSXT bases its staffing requirements on the service needs of a 2,140-person organization which is twice the staffing (1,155 people) proposed in SECI's Opening Evidence.<sup>51</sup> This helps explain somewhat CSXT's proposal to double the SFRR's IT staffing initially proposed by SECI (from 14 to 28 employees).

CSXT's experts reference benchmarking studies that show the average company spends 4.2% of revenue on IT, and that the average transportation company spends 3.7% of revenue on IT. This is totally irrelevant in this case because these benchmarks include all transportation companies such as airlines, trucking companies, waterway operators, bus lines, Class I railroads, *etc.* The SFRR is a railroad, with a relatively simple operation that lends itself to readily-available IT systems. It should be no surprise that the SFRR spends a significantly lower percentage of its revenue on IT than the average transportation company.

Mr. Kruzich responds below to each of CSXT's IT staffing proposals.

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<sup>51</sup> The staffing has been increase lightly on Rebuttal, but not to an extent that affects the IT needs to any significant degree.



Department Head. CSXT suggests that it is not reasonable for the head of the IT department to report to the Vice President–Law & Administration due to the difference in professional training. Mr. Kruzich concurs that it would be equally appropriate for the IT head to report to the Vice President – Finance & Accounting rather than the Vice President–Law & Administration. However, he disagrees that the IT sub-department needs to be headed by a Vice President, particularly since the IT department (as revised on Rebuttal) consists of only 13 employees who report to the department head. A Director-level employee is perfectly capable of handling responsibility for the overall IT strategy and tactical direction of a department this size. Moreover, the Board has accepted a SARR IT department headed by a Director who reports to one of the other vice presidents. *AEP Texas* at 57; *WFA/Basin* at 46.<sup>52</sup>

Other Directors. CSXT's experts recommend three Directors to oversee three primary functions: Applications, Technology Support and IT Security. When Mr. Kruzich was head of the KCS IT department, it had three directors: one to oversee computer operations which included an IBM mainframe, a second to oversee all revenue, car hire and financial management reports applications; and a third to oversee all transportation, applications including dispatching, crew calling, as well as disbursements, *etc.* KCS had 50-plus IT positions, including IT management that was responsible for all in-house computer

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<sup>52</sup> In *AEP Texas* the SARR's IT staffing (in addition to the Director) consisted of ten IT Specialists. This is only three less than the 13 IT Specialists SECI provides on Rebuttal.

applications. However, unlike the SFRR, KCS did not outsource any applications or IT services. The SFRR outsources approximately 95% of its IT operating cost to RMI. Most of these types of functions will be performed at RMI locations by RMI personnel. There will be very little applications development at SFRR. However, when it is required, it will be provided by the two programmers/development specialists provided by Mr. Kruzich, and technology support will be provided for by the five programmer/ technician specialists provided by Mr. Kruzich. All of these functions will be supervised by the Director of IT.

CSXT's IT staffing recommendation involves a Vice President, three Application Directors, two Application Support Managers, a Database Support Manager, an Interface Support Manager, and a Server Support Manager, or a total of nine supervisor positions out of the total staff of 28. This is a supervisor ratio of about 1:3; in other words, each supervisor has three people working for him or her on average. This kind of supervisor ratio is not what an efficient, least-cost operator would tolerate, and is at the edge even of CSXT's G&A experts' absurd "span of control" of three to six employees.

Business Analysts. CSXT's experts recommend three Business Analysts to serve as liaison to RMI and the user departments, in particular the Finance & Accounting Department. CSXT Reply at III-D-92-93.<sup>53</sup> Mr. Kruzich

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<sup>53</sup> These positions appear to have substantially the same functions as the three Customer Business System Analysts that CSXT proposes for the Finance & Accounting Department. *Id.* at III-D-60. There is no need for two sets of

strongly disagrees that these positions are necessary given the limited number of computer transactions and relatively limited interface with business users, which will be handled by RMI. The lead RMI Technician that was provided for in the Opening Evidence is sufficient to serve as a liaison to RMI and the user departments. Moreover, Mr. Kruzich's staffing includes five Programmer/PC Technician specialists who provide additional user support in the day-to-day operation of the RMI system.

Database Management and Interface Support. CSXT's experts recommend one Database Support Manager and one Interface Support Manager to design, maintain and optimize database management systems and manage interfaces between IT systems. The SFRR will have approximately 750 customers, 26 different commodities, many unit train operations, and approximately 1200 employees – therefore, database management will be far less than at CSXT, which has thousands of customers, thousands of different commodities, thousands of employees, thousands of its own freight cars and locomotives, over 22,000 route miles, thousands of origin/destination pairs, thousands of rate combinations, *etc.* Mr. Kruzich concurs that an additional support person is required to handle the functions described by CSXT, but their relative simplicity means that two employees are not needed. Accordingly, Mr. Kruzich has added one position, a Database and Interface Support Manager, to the IT staff to handle these functions.

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employees to cover the same function, and CSXT appears to have indulged in a double-count here.

Application Support Managers. CSXT's experts recommend that a total of four Application Support Managers would be required to maintain and upgrade the crew calling, dispatching, finance/accounting, and budgeting systems. This staffing is overkill; Mr. Kruzich has staffed these functions with two Programmer/Development specialists, which is adequate. When Mr. Kruzich was Vice President of IT on the KCS, he had one part time crew caller programmer and one part time dispatcher programmer who handled the upgrades and maintenance of these functions. These two programmers did other development assignments for other department as well. KCS is a much more complicated system than SFRR, with many more employees. Based on Mr. Kruzich's experience at KCS, two Programmer/Development positions are adequate for applications support.

Technology Support. CSXT's experts recommend ten Support Technicians and one Director of Technology Support. Mr. Kruzich disagrees that the SFRR needs total staffing of more than the six Technicians proposed on Opening, which includes one Help Desk Technician and one 24/7 Programmer/PC Technician position.<sup>54</sup> When Mr. Kruzich was with the KCS, it had one Help Desk Technician position on duty "24/7," which was more than adequate to handle all incoming calls for technical support. The SFRR's Help Desk Technician is not on duty 24/7. But in his absence calls are automatically routed to the on-duty Programmer/PC Technician. As at KCS, this individual will solve a majority of the problems while on the telephone. If there is an emergency, he would contact one of

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<sup>54</sup> SECI Opening at III-D-40.

the other on-call Technicians to solve the more difficult problems which (based on Mr. Kruzich's experience at KCS) are likely to be few and far between. KCS also found it much more efficient to outsource maintenance for the field PC, printer, router and other IT equipment due to the very infrequent maintenance needed.<sup>55</sup>

Server Management. CSXT's experts state that the SFRR would require a Server Support Manager to provide server infrastructure support and maintenance. CSXT Reply at III-D-95. Mr. Kruzich has provided for this function with an Exchange 2007 Engineer specialist, and CSXT has not explained why this function cannot be adequately handled by this position rather than the Manager position it proposes. CSXT's experts allege that the IT staff would have to maintain a minimum of 63 servers (*Id.*), but this number appears to be based on CSXT's total employee count of 2,104 employees, and thus is grossly overstated.

There appear to be other discrepancies in the server count. For example, PS Technology, the provider of the Crew Calling System the SFRR will use, recommended one server for its PC-based system where as CSXT's experts recommended four. When Mr. Kruzich was at the KCS, it had approximately 60 servers for all of its operations which included all in-house systems (in other words, no out-sourcing). On the SFRR 95% of the total IT operating cost is outsourced to RMI.

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<sup>55</sup> Most people who have a PC and printer at home can probably count on one hand the number of post-setup service calls they have made during the past five years.

On Opening, Mr. Kruzich provided for a total of six servers for the SFRR. On Rebuttal, he has concluded that seven additional servers are needed for accounting, security network, identify and access, internet IDs, file, mail and a corporate website. He has therefore added seven Dell Power Edge 2900 servers, at a total cost of \$65,989.

IT Security. CSXT's experts recommend that a Director of IT Security and four IT Security Technicians be added to the SFRR's IT staff. This recommendation totally ignores the fact that the transportation, revenue accounting and car accounting systems – which represent 95% of the SFRR's computer operating cost – are outsourced to RMI. RMI provides IT security on these systems and SFRR will provide IT security only on the computer systems it has in-house such as the accounting, human resource, dispatching and crew calling systems. Mr. Kruzich has provided IT security for these systems with two Network Engineer specialists.<sup>56</sup>

CSXT's experts downplay the importance of the Watchguard UTM security solution software, which Mr. Kruzich included in his package of IT systems for the SFRR. This a very important perimeter security defense, and is highly recommend by many Security experts. CSXT's experts infer that SFRR security design and staffing would leave a number of security gaps, but have not explained why the two Network Engineers cannot adequately oversee the security of SFRR computer network.

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<sup>56</sup> SECI Opening at III-D-40.

CSXT's experts reference the recommendations of the National Institute of Standards and Technology (NIST) for minimal information and standard security technologies used by Class 1 railroads. The SFRR may qualify as a Class I railroad in total revenues, but it certainly does not have the complex computer operations of the large Class I railroads such as CSXT. However, after reviewing CSXT's evidence on network security Mr. Kruzich concurs that an additional server is warranted for security purposes. Thus, one of the additional seven Dell Power Edge 2900 Servers that Mr. Kruzich has provided on Rebuttal will be devoted to network security.

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In summary, on Rebuttal SECI has increased the SFRR's G&A staff by 27 employees, raising the total from 71 to 98. This represents a 50 percent increase over the highest number of G&A employees ever accepted by the Board in a coal rate case (66 employees; *see AEP/Texas* at 51-53, a case in which the SARR also carried non-coal traffic). SECI's Rebuttal G&A staffing is more than sufficient and should be accepted by the Board over CSXT's bloated staffing.

**ii. Compensation**

CSXT states that it accepts SECI's proposed salaries and benefits for the SFRR's G&A personnel, with the exception of the President and Vice Presidents. CSXT Reply at III-D-98. With respect to these positions, CSXT states that while SECI based their salaries on the compensation for similar positions by KCS, SECI included only their salaries and left out "important compensation

elements such as bonuses and stock grants.” *Id.* Bonuses are not specifically identified in the KCS proxy statements, so CSXT has no basis to assume they were omitted. SECI excluded stock awards, stock options, non-equity incentive plan compensation and “all other compensation,” to the extent they were identified,<sup>57</sup> which is consistent with the treatment of these compensation elements in *WFA/Basin*.

CSXT’s proposal to include stock awards, option awards and other compensation for the SFRR’s senior executives must be rejected for the same reason the Board rejected a similar proposal by the defendant in the *WFA/Basin* case, in which the complainant also based SARR executive compensation on the salaries (including bonuses) paid to KCS executives. The Board held that because stock options were not counted as expense by KCS, they should not be included in the SARR’s executive compensation. *See WFA/Basin* at 48-49. Review of KCS’s recent financial statements confirms that KCS still does not count stock awards and options as an expense.

### **iii. Materials, Supplies and Equipment**

CSXT accepts SECI’s proposed unit costs for the materials, supplies and equipment needed by the SFRR’s employees. The revised employee count on Rebuttal requires a corresponding revision in the total expenditure for materials,

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<sup>57</sup> See Opening e-workpapers “III-D-3 D Salaries.pdf” and “SFRR Salaries.xls.”



supplies and equipment. See SECI Rebuttal e-workpaper “SFR Operating Expense-Reb.xls” for details.

**iv. Other**

**(a) IT Systems**

For the most part, CSXT’s G&A experts have accepted Mr. Kruzich’s proposed IT systems for the SFRR, including the RMI system.<sup>58</sup> CSXT Reply at III-D-10-103. However, they reject the use of Peachtree MAS 200 package as a general accounting system on the basis that it is designed for small businesses with no more than 40 users. CSXT Reply at III-D-101. Mr. Kruzich believes the Peachtree package can in fact be used by the SFRR, but he accepts CSXT’s proposal to substitute the Expert Oracle Software Package. However, he adjusts the cost to reflect the SFRR’s Rebuttal staffing of approximately 1,200 employees rather than the 2,140 proposed by CSXT but is adjusted to accommodate the additional staffing posited by SECI on Rebuttal. The cost adjustments are included in the revised IT Capital and Operating cost spreadsheets. See Rebuttal e-workpapers “SFR-Capital Budget-Rebuttal.xls” and “SFR-Operating Budget-Rebutal.xls.”

CSXT has accepted the Optimum Solutions package to perform certain human resources functions. However, it states that SECI’s cost is not

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<sup>58</sup> Mr. Kruzich notes that his RMI computer cost was based on quotation from RMI for a system for a typical railroad operation that handles most carloads on an individual basis. Thus the cost is appropriate for the SFRR which does have some carload traffic in addition to its unit-train traffic.

sufficient to cover the software cost or the annual maintenance cost. Mr. Kruzich does not agree with CSXT's cost because it appears to be based on 2,140 employees. It should be based on approximately 1200 employees. Mr. Kruzich does, however, concur that the cost in the Opening Evidence was understated. The capital cost for the Optimum Solutions should have been \$56,000 rather than the \$28,824 shown in Mr. Kruzich's opening spreadsheet, or an increase of \$27,176 based on approximately 1200 employees. Also, the annual operating cost stated in the Opening Evidence was \$3,000 and it should be \$8,400 based on approximately 1200 employees, or an increase of \$5,400. Therefore, \$27,176 is being added to the capital budget and \$5,400 to the annual operating budget to correct these errors.

CSXT's experts indicated that SECI did not provide funds to purchase servers for the SFRR. *Id.* at III-D-101. This statement is incorrect; Mr. Kruzich provided servers for the dispatching software, the crew calling system, and the Human Resources product, which were included in the overall purchase prices of these software packages. See SECI Op. e-workpaper "SFR-Capital Budget.xls." In addition, two servers were provided for the network configuration at the SFRR's Folkston, GA headquarters.

As noted earlier, Mr. Kruzich has added seven more servers on Rebuttal. These include a server for the accounting function, an identity access server, an internet access server, a file server, a mail server, a corporate website server, and a network security server. A total of \$65,989 (\$9,427 x 7) has been

added to the Rebuttal budget for these additional servers. See SECI Rebuttal e-workpaper “SFR-Capital-Budget-Rebuttal.xls.”

CSXT’s experts indicated that SECI allowed only a monthly cost for pager and telephone service instead of annual costs. On further review this is correct; on Rebuttal Mr. Kruzich corrects this error and has included an annual expense of \$24,151.60 for pagers and \$31,674.72 for telephone service, for a total annual operating-expense budget for these items of \$55,826.32.

CSXT’s experts also state that SECI failed to include costs for any toll-free telephone numbers and long distance calls. *Id.* at III-D-102. This is incorrect. As is clearly shown in the operating spreadsheet under “telephone transmission,” \$81,600.00 was allocated for toll-free telephone numbers and long distance calls. The spreadsheet also shows, under “voice systems,” the rationale and the computations underlying this amount.. CSXT asserts the cost should be \$300,000 per year, but this is extremely high considering the SFRR’s size and operations. CSXT’s experts calculate this cost assuming 2,140 SFRR employees, when the proper number is approximately 1,200. They also purport to compare the SFRR’s (overstated) long-distance minutes with CSXT’s, but CSXT has far more employees and communicates with thousands more customers than the SFRR does. Such a comparison is meaningless.

**(b) Start-up and Training Costs**

CSXT accepts SECI’s calculation of training expense for train and enginemen, maintenance-of-way workers and IT employees. It takes exception to

SECI's training cost for dispatchers, car inspectors, managers of yard operations (yardmasters) and assistant managers of train operations. Each of these categories of employee is discussed below.

On Opening, SECI based its training for dispatchers on a course offering available at Johnson County Community College ("JCCC") in Overland Park, KS. JCCC offers a 14 week course for new untrained students to learn to become qualified dispatchers. According the JCCC website, individuals attending this course are responsible for paying their own tuition, room, board and travel expense related to this course. *See* SECI Opening at III-D-56.

CSXT claims that it cannot locate any information for this course on JCCC's website and concludes it does not exist and therefore that SECI's evidence is not supported. SECI inadvertently omitted copies of JCCC's website material related to the dispatchers course from its Opening workpapers, and has included that information with its Rebuttal Evidence. *See* SECI Rebuttal e-workpaper "JCCC Dispatcher Training.pdf." CSXT states that dispatchers require 30 weeks of training and have included dispatcher salaries associated with 30 weeks of training for all dispatchers. CSXT's 30 weeks of training includes 12 weeks of classroom training and 18 weeks of on the job training.

On Rebuttal, SECI accepts CSXT's concept of 18 weeks of on the job training for dispatchers and continues to rely on the JCCC course work for 14 weeks of classroom training, thus providing a total of 32 weeks of training for dispatchers or 2 weeks more than that provided by CSXT. SECI continues to

assume that the SFRR will reimburse the student for the price of admission (\$3,498 per student) for the JCCC course and pays individuals who complete the course a salary during the remaining 18 weeks of training. Consistent with the JCCC course, SFRR does not pay the students a salary during the 14 week JCCC course.

On Opening, SECI paid \$5,000 for training expenses for car inspectors, plus one week of salary during training. On Reply, CSXT provides nine weeks of training for car inspectors. On Rebuttal, SECI accepts CSXT's nine weeks of training expense for car inspectors.

On Opening, SECI provided no training for managers of train operations (yardmasters) or for assistant managers of train operations. CSXT asserts that both of these positions would require 21 weeks of training and includes salaries associated with this training for yardmasters, but provides no such training for assistant managers of train operations. On Rebuttal, SECI accepts CSXT's 21 weeks of training for yardmasters.

**(c) Ongoing Restaffing Cost**

CSXT accepts SECI's method of calculating expenses related to employee ongoing re-staffing cost, i.e., attrition cost, however it rejects SECI's attrition rate of 3.0 percent and points to what is alleged to be CSXT's actual attrition rate of 11 percent as shown in its Reply e-workpaper "Annual Attrition Impact.pdf".

CSXT's 11 percent attrition rate should be rejected for two reasons. First, CSXT's Reply e-workpaper "Annual Attrition Impact.pdf." is not supported

by any documentation whatsoever and as such cannot be verified.<sup>59</sup> Second, CSXT official Kathy Burns was quoted in a April 1998 article in *Global Logistics & Supply Chain Strategies*, when referring to the CSXT and NS acquisition of Conrail, that “the total number of people that will be affected by this [the Conrail acquisition] is about 3 percent, which is in line with normal attrition rates at CSX.”<sup>60</sup>

The attrition rate referred to by CSXT’s Ms. Burns and used by SECI is further supported by an August 2004 article in *Rock Products*, referring to CSXT’s service in aggregate hauling business and quotes another CSX spokeswoman, Misty Skipper, as saying; “We are currently on schedule to hire a little over 1,400 employees this year, which is about 25 percent above our attrition rate.”<sup>61</sup> Dividing 1,400 new hires by 125 percent indicates that CSXT would hire 1,120 employees to cover normal attrition. This number of new hires when divided by CSXT total employees in 2004 of 33,591 yields an attrition rate of 3.3 percent. Thus there is ample support for SECI’s proposed 3.0% attrition rate.

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<sup>59</sup> This document is merely a one-page table providing alleged attrition rates by employee age group. It shows, for example, that employees who are age 60 to 64 have a 55 percent attrition rate and employees who are ages 65 to 69 have a 57 percent attrition rate and a CSXT weighted average attrition rate for all employees of 11 percent. As a new entity, the SFRR would not be likely to hire many employees at or above 60 years of age.

<sup>60</sup> See SECI Rebuttal e-workpaper “CSXT Attrition rate.pdf.”

<sup>61</sup> *Id.*

**(d) Bad Debt**

CSXT assumes the SFRR will not receive 100% of the revenue it bills to its customers and that the SFRR would experience a writedown of doubtful accounts comparable to CSXT's own experience. In 2007 and 2008, CSXT indicates that its uncollectable accounts equaled 0.11 percent of revenues. CSXT Reply at III-D-105-106.

SECI does not accept CSXT's uncollectable account of 0.11 percent of revenues for two reasons. First, CSXT has access to the actual writedowns for uncollectable accounts associated with each of the SFRR customers (SECI does not have access to this data) and it could have reviewed this information to determine what, if any, its actual uncollectable experience is with these customers. Second, customers who are late in paying are charged interest and neither CSXT's write down for uncollectables, nor its revenues on the SFRR, includes any allowance for the interest earned from late-paying customers. These interest charges may well offset any uncollectable amounts from SFRR customers.

**4. Maintenance-of-Way**

SECI's maintenance-of-way ("MOW") plan for the SFRR is described at pp. III-D-58-105 of the Opening Narrative. CSXT attacks SECI's MOW plan for the SFRR as inadequate due to its heavy tonnages and axle loads (up to 286,000 pounds gross weight on rail ("GWR") per car) and the supposedly adverse terrain in which the SFRR's lines are located. CSXT proposes to nearly double the SFRR's annual MOW expense, from \$53.8 million to \$100.8 million. It

also proposes to increase the SFRR's office and field MOW personnel by nearly 70 percent, from 345 employees to 584 employees (or an increase of 249 employees).

CSXT claims that the SFRR's MOW plan developed by its principal engineering expert, Harvey Crouch, ignores the SFRR's size, tonnage and varied terrain. CSXT Reply at III-D-113-115. This claim is absurd. First, as detailed in his Statement of Qualifications (SECI Opening at IV-27-30), Mr. Crouch has considerable experience building and maintaining railroad lines in the territory served by the SFRR, including direct field experience as a member of the NS Engineering Department. His consulting firm, headquartered near Nashville, TN, specializes in railway engineering and has planned and supervised numerous successful railroad construction and MOW projects in the SFRR region including many projects for NS (a carrier with high MOW standards and well-maintained track). Mr. Crouch and his team at Crouch Engineering are well-aware of the geography, weather and other conditions in which the SFRR must operate. They are also familiar with CSXT's maintenance practices, and followed them where appropriate in designing the SFRR MOW plan.

CSXT would have the Board believe that heavy-axle-load unit coal trains operating in mountainous terrain are a new phenomenon, not taken into account by Mr. Crouch. However, 286,000-pound cars have been common in the railroad industry (and, in particular, in the mountainous Eastern regions where coal is originated) for at least 25 years. Contrary to CSXT's insinuation, Mr. Crouch is well-aware that a railroad that handles a high volume of such trains, partly in



mountainous terrain, as well as intermodal traffic, must be maintained to a different standard than a railroad with lower traffic densities, less coal traffic, and less mountainous terrain.

Mr. Crouch did not rely solely on his own past experience in developing the SFRR's MOW plan. In the fall of 2008 and winter/spring of 2009, Mr. Crouch and his team<sup>62</sup> conducted a thorough inspection of the CSXT lines being replicated. They observed the different types of terrain involved, roadbed and ditch conditions, track components and conditions, existing bridges and culverts (design, type and configuration), grade crossings and grade separations, signal systems, and train operations in varying weather conditions on both tangent and curved track in mountainous, intermediate and coastal-plain areas. These inspections played an important role in developing the SFRR's MOW plan.

Other important factors considered by Mr. Crouch and his team were annual gross tonnages moving over the SFRR's lines, track geometry including grades and curves, geography and climate, maximum authorized train speeds, and train weights.<sup>63</sup> The annual gross tonnages drove the design of maintenance

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<sup>62</sup> The Crouch Engineering inspection team was led by Arthur (Ted) Walker, who has nearly two decades of experience (1983-2002) as Senior Project Engineer in CSXT's Engineering Department. *See* SECI Opening at IV-30.

<sup>63</sup> 286,000-pound cars move mostly in unit coal trains, which comprise a minority of the SFRR's traffic. Most of the SFRR's merchandise trains, and all of its intermodal trains, have cars or containers that are loaded to considerably less than 286,000 pounds GWR. However, Mr. Crouch designed the SFRR MOW plan primarily for the 286,000-pound loads.

frequencies, testing frequencies, and staffing. Mr. Crouch also considered CSXT's own maintenance standards, as well as other industry standards for maintenance practices based on annual gross tonnage. Finally, Mr. Crouch took into account the fact that the SFRR is not unionized,<sup>64</sup> and thus does not need to follow the traditional craft boundaries (or layers of field supervision) that are typical of Class I railroads such as CSXT. The SFRR MOW plan and department staffing were based on the size of the SFRR and the development of individual maintenance territories, eliminating the need for a layered management hierarchy such as the one used by CSXT.

CSXT's discussion of the SFRR MOW plans (both SECI's and CSXT's) is sponsored primarily by James Bagley, who was CSXT's Chief Engineering Officer (and thus responsible for maintaining the CSXT system) from June 2004 to February 2008.<sup>65</sup> Most of Mr. Bagley's discussion of SECI's MOW plan consists of unsupported opinion, and he never compares that plan – or his own SFRR MOW plan – with actual CSXT or NS maintenance standards and practices (Mr. Bagley worked in the NS Engineering Department before joining CSXT).

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<sup>64</sup> The Board has recognized that a SARR need not be a unionized carrier. *TMPA* at 687; *PSCo/Xcel* at 651.

<sup>65</sup> CSXT states that Mr. Bagley “has many years of experience constructing and maintaining the rail lines SECI selected for inclusion in the SFRR” (CSXT Reply at III-D-115). In fact, Mr. Bagley was not involved in constructing *any* of the lines replicated by the SFRR – they were constructed long before he joined CSXT – and his maintenance “experience” consisted of less than four years in charge of CSXT's Engineering Department, including system maintenance. CSXT Reply at IV-1-2. Mr. Bagley has had no direct experience maintaining any of the CSXT lines comprising the SFRR's route.

This may well be because those standards and practices support Mr. Crouch's MOW plan, not Mr. Bagley's. It should also be noted that the base-year tonnage the SFRR moves over its lines represents only 62 percent of the tonnage that the real-world CSXT moved over the same lines in 2008.

In the balance of this section, SECI Witness Crouch discusses CSXT's specific differences between the parties' respective MOW plans, and why SECI's plan is more appropriate for the SFRR and thus should be accepted by the Board.

**a. The SFRR's Geography and Terrain**

At pages III-D-120-123 of the Reply Narrative, CSXT disputes SECI's characterization of the geography and terrain traversed by the SFRR. CSXT's statements on geography and terrain represent an attempt to mislead the Board into believing that a large portion of the SFRR route is in mountainous terrain with significant vertical grades and curvature, as was the case with the SARR involved in the *Duke/NS* and *Duke/CSXT* rate cases.

For example, CSXT states that the portion of the SFRR's West Division from Princeton, IN to Nashville, TN is "constructed through hilly, mountainous and low-lying terrain across vertical grades of up to 1.38%." CSXT Reply at III-D-121. There is no "mountainous" terrain between Princeton and Nashville; at most some of its terrain (approaching Nashville) could be

characterized as “hilly.”<sup>66</sup> Similarly, CSXT characterizes 104 of the 214 route miles from Chattanooga, TN to Manchester, GA as having “curved track constructed through the north Georgia mountains, across the undulating grades of rolling hill terrain of west and central Georgia with vertical grades of up to 1.20%” *id.*) The portion of the “north Georgia mountains” traversed by the SFRR is actually in northwestern Georgia. These “mountains” are actually relatively gentle, and certainly not the kind of mountains found in the central and northern Appalachian regions in West Virginia, southwestern Pennsylvania and western Maryland, or even in northeastern Georgia.

Mr. Crouch has prepared a map exhibit, Rebuttal Exhibit III-D-1, that shows the SFRR’s route and mileage in each of the topographic regions it traverses. On this map, the route is divided between mountainous, hilly/rolling and flat areas. As can be seen from the map and accompanying mileage percentages for each topography type, the mountainous areas traversed by the SFRR are much more limited than CSXT would have the Board believe. Most of the East Division lies in the Coastal Plain and Piedmont, and only 14% of the East Division is actually in what reasonably could be considered mountainous terrain – not 47% as claimed by CSXT. Similarly, none of the West Division lies in mountainous terrain, not 46% as claimed by CSXT.

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<sup>66</sup> Mr. Crouch resides and works in the Nashville area, and is quite familiar with the Tennessee topography traversed by this portion of the SFRR.

**b. MOW Personnel**

In the introduction to its MOW discussion, CSXT claims that SECI's field staffing uses an over-simplified, one-size fits all approach based on average route miles, without considering the unique characteristics of the specific track to be maintained such as track miles and geography. CSXT Reply at III-D-113-114. While SECI provided the average route miles covered by various categories of field MOW employees as information,<sup>67</sup> its workpapers show that the districts are not uniform in length. For example, the Roadmaster districts vary from a high of 202.8 route miles to a low of 179.8 route miles.<sup>68</sup> Contrary to CSXT's claim, the Roadmaster and track crew districts were well thought-out by Mr. Crouch, and took into account the gross tonnage, track miles, climate, and terrain in each in each district.

SECI begins its response to CSXT's evidence on MOW personnel with a discussion of the general office staff, and then turns to a discussion of the field maintenance forces.

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<sup>67</sup> At page III-C-67 of the opening Narrative SECI incorrectly stated that the average route miles per Roadmaster district is 200; in fact it is 190 ( $2,092.40 \text{ constructed route miles} \div 11 \text{ Roadmaster districts} = 190.2$ ). The average constructed route miles covered by each track crew is 80, not 100 as claimed by CSXT ( $2,092.40 \text{ route miles} \div 26 \text{ crews} = 80.5$ ). CSXT also omits the fact that both parties provided for the same number of Assistant Roadmasters (21). This equates to an average of 100 route miles of coverage per Assistant Roadmaster under both parties' MOW plans.

<sup>68</sup> See Opening e-workpaper "MOWRoadmaster Territories.xls." As noted later in the text, the route miles shown in that workpaper are understated and have been corrected on Rebuttal, and the Roadmaster and track crew territories have been rearranged slightly.

**i. General Office Staff**

The MOW function is headed by the SFRR's Vice President-Engineering under both parties' MOW plans. The Vice President-Engineering is included with the SFRR's other non-train Operating employees, but his principal duties are to supervise the MOW function. SECI Opening at III-D-18-19, 77. CSXT does not separately discuss the Vice President-Engineering, but does include this position in its list of non-train Operating personnel. *See* CSXT Reply at III-D-43.

SECI provides a total of 17 general office personnel to staff the MOW function; CSXT proposes a general office staff of 22, or five additional employees. The specific staffing proposed by both parties is shown in Table III-D-19 on page III-D-147 of CSXT's Reply Narrative. (SECI discusses most of this staff in connection with the specific MOW sub-departments for which they are responsible (track, C&S, B&B), while CSXT discusses all of the general office staff together.)

The five-person increase proposed by CSXT adds unneeded layers of management that are typical of a Class I railroad and its militaristic, division-based organization.<sup>69</sup> For example, SECI provided a Track Engineer, a Communications & Signals Engineer, and a Bridge Engineer – all of whom report directly to the Vice President-Engineering – to head these maintenance functions. SECI Opening

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<sup>69</sup> As SECI noted on Opening, the SFRR system is approximately the same size as one of CSXT's operating divisions. SECI Opening at III-D-64.

at III-D-66-76. CSXT replaces each of these positions with two positions (a “Chief” Engineer and a “Division” Engineer for each function), and inserts two additional “Engineer” positions (a Chief Engineer-Maintenance of Way and a Division Engineer-Maintenance of Way) between the other Engineer positions and the Vice President–Engineering. These positions are described at pp. III-D-140-142, but CSXT has not explained why the Track, C&S,<sup>70</sup> Bridge and other staff Engineers proposed by SECI cannot adequately perform the same functions, any why additional layers of supervision are needed. The extra positions added by CSXT are typical for a large Class I railroad that has many divisions, each with its own management structure, but are not necessary for the SFRR.

CSXT also proposes two Supervisors of Work Equipment rather than the single position proposed by SECI, and five Administrative Assistant/Clerks rather than the four proposed by SECI. According to CSXT, the two work equipment supervisors help manage “the large amount of work equipment that must be maintained by the SFRR.” CSXT Reply at III-D-143, 146. CSXT provides a workpaper that purports to develop the SFRR’s work train requirements for surfacing and ballast cleaning operations,<sup>71</sup> but most surfacing and ballast cleaning are performed by contractors, and CSXT has not disputed Mr. Crouch’s testimony

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<sup>70</sup> SECI notes that it added two Assistant Engineers for the C&S function, one primarily responsible for the signal system and the other primarily responsible for the communication system. This is consistent with CSXT’s staffing for C&S as shown in its Table III-D-19.

<sup>71</sup> CSXT Reply e-workpaper “SFRR - MOW Work Trains.”

that, today, contractors generally provide their own work equipment and the SFRR does not need a separate fleet of work equipment. SECI Opening at III-D-101.

CSXT describes the support functions provided by the Administrative Assistant/Clerks at p. III-D-139 of the Reply Narrative but fails to explain why five clerks are needed to support the MOW staff, rather than the four proposed by SECI (one for each of the field-maintenance sub-departments and one for the administrative/support staff). It should also be noted that SECI assigned an additional Administrative Assistant/Clerk to the Chief Engineer; this clerk is also available to assist the MOW staff in performing routine administrative functions.

In summary, CSXT has not demonstrated that Mr. Crouch's general office staffing for the MOW function needs to be increased. The Board should accept the 17 general office employees proposed by SECI.

**ii. Track Department**

The differences between the parties' field staffing for the track-maintenance function are shown in Table III-D-20 on page III-D-151 of CSXT's Reply Narrative. Most of the difference of 126 total employees is accounted for by CSXT's proposal to increase the Track Crew personnel by 78 employees.<sup>72</sup> CSXT replaces the four Assistant Track Engineer (Field Production) positions with four Track Engineers (Field Production), without explaining why this unnecessary

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<sup>72</sup> The numbers in the "Difference" column of CSXT's Table III-D-20 do not match the differences between CSXT's and SECI's employee counts for Track Crews and Vehicle Operator/Semi-tractors, or for total employees.



change (resulting in a higher salary) was made. CSXT also posits additional Roadmasters, Roadway Machine Operators, Welder/Helper/Grinders, Ditching Crews and Smoothing Crews.

CSXT begins its discussion of the track-maintenance forces by criticizing SECI's provision of 11 Roadmaster districts, which CSXT proposes to increase to 17. CSXT Reply at III-D-123-130. CSXT asserts that "SECI developed its Roadmaster territories by simply assuming an average size of approximately 190 route miles," without any consideration of track miles or other relevant factors such as geography, climate and tonnage. *Id.* at III-D-123-124. CSXT is wrong; SECI Witness Crouch did consider these other factors, which he agrees are relevant.

In its discussion of several of the specific SFRR Roadmaster districts proposed by SECI, CSXT states that SECI omitted several branch lines in calculating the route miles covered by the district. After reviewing his original e-workpaper describing the Roadmaster districts ("MOWRoadmaster Territories.xlsx"), SECI Witness Crouch agrees that the workpaper did not reflect the branch lines and thus understated the SFRR's total route miles. However, Mr. Crouch did, in fact consider the SFRR's 2,092.4 constructed route miles including branch lines, and its 2,842.53 mainline track miles, in developing his Roadmaster districts (and track crew assignments).<sup>73</sup> To set the record straight, Mr. Crouch

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<sup>73</sup> The SFRR's route miles have been increased by six-tenths of a mile on Rebuttal, to 2,093.00 constructed route miles. (The SFRR is not responsible for construction or maintenance of the MGA lines over which it has operating rights; those lines are owned and maintained by NS.)

submits Rebuttal e-workpaper “MOWRoadmaster Territories.xls” which details the route miles, mainline track miles and other track miles covered by each Roadmaster district as well as by each of the SFRR’s 26 track crews. The total route miles and total track miles have been revised to reflect the minor additions described in Part III-B-3 above. Although there is no need to increase the number of Roadmaster districts or track crews from those proposed on Opening, they have been revised slightly to better balance the route and/or track miles in each district in response to CSXT’s criticisms.

In particular, Mr. Crouch has revised the 26 track crews by assigning a specific territory to 22 of them and making the other four crews “floating” crews to provide additional manpower in the longer districts or where the terrain is mountainous.<sup>74</sup> For example, the territory covered by Roadmaster District Nos. 2 and 3 and regular track crew Nos. 4, 5, 6 and 7 includes hilly terrain with a large number of curves. Mr. Crouch has therefore added a floating track crew (designated Crew X-I in “MOWRoadmaster Territories-Revised.xls”) that spends most of its time in these districts, supplementing the four regular track crews. This crew can also assist the one of the three track crews assigned to the southern portion of Roadmaster District No. 1, which also is somewhat hilly. Similarly, floating track crew No. X-2 supplements the two regular track crews assigned to

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<sup>74</sup> Mr. Couch notes that sharing and moving track crews in this manner is a common practice on NS.

Roadmaster district Nos. 4 and 5, which also includes hilly territory with many curves. Track crew No. X-3 can supplement any regular track crew in Roadmaster district Nos. 8 and 9, and track crew No. X-4 can supplement any regular track crew in Roadmaster district Nos. 10 and 11.<sup>75</sup>

The revised track crew territories have been carefully balanced by Mr. Crouch to address the concerns raised by CSXT in analyzing three of his Opening Roadmaster districts and associated track crews.<sup>76</sup> The track miles covered by each of the 22 regular track crews ranges from a low of 96.0 to a high of 134.1 miles, but the actual number of miles that each regular crew needs to cover, particularly in more difficult terrain, is reduced by the use of floating track crews who move to areas requiring extra manpower as needed.

Although CSXT has not provided any evidence as to CSXT's standards and practices for the number of track miles that can be maintained by a

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<sup>75</sup> Although Roadmaster District No. 6 (which covers portions of West Virginia and Pennsylvania) is also hilly with numerous curves, Mr. Crouch has assigned two regular track crews to this district with an average of 134 track miles per crew. However, 60 miles of this district represents the constructed portion of the Robinson Run Branch, which has low tonnage (6.5 million gross tons per mile annually) and thus requires less maintenance than the SFRR's main lines which generally have much higher density. Thus, most of the two track crews' effort will be concentrated on the lines north and east of Brownsville, PA.

<sup>76</sup> CSXT Reply at III-D-127-130. In attempting to pick apart these three districts, CSXT's MOW expert fails to present any evidence as to CSXT's standards and practices for such districts, or the sizes of CSXT's Roadmaster and track-crew districts in the same territory. CSXT's discussion also ignores the fact that track crews are routinely assigned to work on other sections of the railroad on an as-needed basis. This was done when Mr. Crouch worked in NS's MOW department, and it is still a current practice on NS.

track crew, the track-mile ranges described above are consistent with practice on other railroads. For example, Mr. Crouch is familiar with a NS track crew based at Savannah, GA. This four-man crew covers approximately 134 mainline track miles in a territory with approximately 20 MGT per mile. It also maintains tracks in six yards as well as industry connection and setout tracks.

CSXT also criticizes Mr. Crouch's use of four-person track crews. CSXT Witness Bagley "judges" that the SFRR needs larger track crews (consisting of five to six workers) in several areas due to the "challenging" terrain involved. *Id.*<sup>77</sup> Mr. Bagley provides no support for his opinion that larger track crews are needed, and indeed there is none. Large track crews, which were necessitated by labor agreements, are becoming a thing of the past and today most railroads use track crews consisting of one foreman and three to four men. On NS, one of the track crew members is typically assigned to the Assistant Track Supervisor

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<sup>77</sup> In this regard Mr. Bagley seems to regard the "lowland" terrain in the coastal plain areas served by the SFRR as just as challenging from a track-maintenance standpoint as mountainous terrain. This is nonsense, particularly since most of the SFRR's track in the coastal plain areas is tangent track, constructed so that the roadbed is perched above water surface elevations. The perched roadbeds effectively bridge over poor soils in the low-lying areas, spreading the freight train loads over a wide area. Moreover, there are very few lateral ditches to maintain in these low-lying areas. Once the roadbed is constructed, very little roadbed maintenance is required over time.

Mr. Crouch notes that NS for years has had a standard practice of bridging over poor soils in low-lying and swampy areas using new roadbed fill for new construction, in the same fashion as the existing CSXT perched roadbeds were originally constructed. This method was used in the 1983 construction of an NS connection track at Eastover, SC, adjacent to the Wateree Swamp – a project in which Mr. Crouch was personally involved.

(equivalent to an Assistant Roadmaster), who is responsible for inspection of approximately 100 route miles. NS's Savannah area track crew (described above) has only one foreman and three men, one of whom is assigned to the Assistant Track Supervisor who uses the employee for assistance with inspections and miscellaneous repairs. Thus, as a practical matter, the crew consists of only three people. The NS line involved runs roughly parallel to portions of the existing CSXT tracks in the Savannah area which are replicated by the SFRR.

In the past, before implementation of the new FRA Roadway Worker Protection Rules, there was a need for additional personnel in track crews to perform flagging protection services for the crew. Employees are not generally used in this manner today, with the advent of advanced traffic control systems and improved systems for granting track time to work crews.

Four-person track crews have also been accepted by the Board in other SAC cases; *see e.g. WFA/Basin* at 58. Most of the SFRR's terrain is no more challenging from a maintenance standpoint than the high-plains terrain traversed by the SARR involved in *WFA/Basin*, which included significant cuts and fills, a mainline through the rugged Wendover Canyon, and significant grades and curves in some areas.

CSXT also proposes to increase the numbers of employees for other categories of track maintenance, including roadway machine operators, welder/helper/grinders, lubricator repairmen, Roadway Equipment Mechanics, ditching crews and smoothing crews. CSXT Reply at III-D-149-151. However,

CSXT provides no explanation for why it increased the number of crews and/or personnel from the number provided in SECI's Opening MOW plan, which were well-explained (*see* SECI Opening at III-D-69-72) , and CSXT does not even discuss several of these categories in its Reply Narrative.

CSXT's proposal to add one Vehicle Operator (Semi-tractor) and four Vehicle Operators (Material Truck) is also unsupported. CSXT's sole apparent reason for adding these positions is that "[a]ll truck drivers who operate larger over-the-road vehicles. . . must possess DOT and CDL licenses, which require yearly renewal, testing and training." CSXT Reply at III-D-150. There is no reason why the Roadway Machine Operators (and in particular the dozer operators, who have time available for other tasks when their equipment is being moved) cannot be cross-trained and licensed to operate larger vehicles when the need arises. Most materials needed by the track and other crews are transported to the worksite by the crews' assigned trucks. Vendors/contractors also deliver materials to worksites where and as directed by the Roadmasters or Assistant Roadmasters.

### **iii. Communications & Signals Department**

The differences between the parties' field staffing for the communications & signals ("C&S") function are shown in Table III-D-210 on page III-D-153 of CSXT's Reply Narrative. Most of the difference of 57 employees involves proposed increases in the numbers of Signal Maintainers and Communications Technicians; CSXT also proposes to add 10 new Signal Inspector positions.

SECI's discussion of its proposed C&S staffing is set forth at pp. III-D-73-75 of its Opening Narrative. CSXT raises several criticisms of SECI's proposed staffing at pp. III-D-131-134 of the Reply Narrative. The principal criticism is that SECI based its Signal Maintainer requirements on the number of AAR signal units to be maintained, rather than on a "work-loading model based on 'asset/test type weighting factors' that take into consideration the systems maintained, the complexity of the FRA and the SFRR required tests and inspections, and other human factors" that supposedly is used by "many Class I and regional railroads." *Id.* at III-D-132. This sounds very professional – but CSXT did not identify the specific model that it thinks should be used, much less include it in its workpapers or show how it can be used to develop Signal Maintainer requirements. Nor did CSXT indicate what its own real-world staffing levels are for Signal Maintainers or any other C&S personnel. The Board has accepted evidence basing a SARR's Signal Maintainer requirements on the number of AAR signal units to be maintained (*WFA/Basin* at 63, and in the absence of better information it should continue to follow that approach here.<sup>78</sup>

CSXT also notes that SECI undercounted the number of failed-equipment detectors ("FEDs") and communications equipment that would have to be maintained by the SFRR's C&S department, and presented conflicting numbers

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<sup>78</sup> CSXT also asserts that SECI's assumed number of AAR signal units per maintainer is unsupported, but it is based on the direct experience of SECI's C&S expert, Victor Grappone, at the Long Island Railroad which has a more complex signal system than the SFRR. SECI Opening at III-D-74.

at various points in its Opening evidence as to the number of FEDs and AEI scanners on the SFRR system. CSXT Reply at III-D-132, 134. On Rebuttal, SECI has corrected the number of FED's and AEI scanners, and revised the number of AAR signal units to reflect these corrections and the additional interchange and other tracks that have been added on Rebuttal. The revised AAR signal units total 178,322.<sup>79</sup> Using the Opening criterion of 2,000 AAR units per Signal Maintainer, the SFRR requires 89 Signal Maintainers, or an increase of four employees from Opening.

CSXT's discussion of its own, proposed higher C&S staffing levels is very scant, consisting of just over one page of narrative (CSXT Reply at III-D-151-152). No support is provided for CSXT's proposal, other than the simple statement that it is "[b]ased on the network configuration of the SFRR provided by CSXT's operating witnesses" (*id.* at III-D-152) and there is no comparison to CSXT's real-world C&S staffing levels. Thus, there is no basis for the Board to accept CSXT's C&S employee count over SECI's revised count (which includes one more Signal Maintainer than was provided on Opening).

**iv. Bridge & Building Department**

CSXT criticizes SECI's B&B field staff of 18 as unsupported except for the statement that "all of the SFRR's bridges will be constructed using steel and concrete components, resulting in virtually no annual maintenance to the

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<sup>79</sup> See SECI Rebuttal e-workpaper "Original SFRR C&S spreadsheet Revised.xls."



structures.” CSXT Reply at III-D-135. However, CSXT’s quotation is selective, leaving out the last part of the sentence: “ – unlike bridges with timber components which are common on Class I railroads.” *See* SECI Opening at III-D-76.<sup>80</sup> Moreover, SECI explained the work that would be performed by its field B&B forces, consisting of two B&B Supervisors, two Bridge Inspectors, two B&B Machine Operators, and four B&B crews each consisting of a Foreman, Welder, Helper and Carpenter. *Id.* at III-D-76-77. SECI also pointed out (with no disagreement from CSXT) that contractors perform major bridge (pier and superstructure) tunnel and building repairs. *Id.*

CSXT’s only explanation for rejecting the size of SECI’s B&B workforce is that “most routine repairs to bridges and tunnels are the result of events that are indifferent to the materials used in the construction, *e.g.* derailments, dragging equipment, flooding and winter freezing.” CSXT Reply at III-D-135. However, to the extent that routine repairs are needed because of such events, CSXT has not presented any evidence showing the magnitude of repair work than might be required due to such events – nor has CSXT explained why SECI’s field forces are inadequate to the task.

CSXT proposes to double the number of B&B Supervisors and Inspectors, from two of each to four of each. CSXT accepts the number of B&B Machine Operators (two) proposed by SECI, but it proposes to double the number

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<sup>80</sup> CSXT’s proposal to increase the SFRR’s B&B field workforce by a factor of more than two doubtless was influenced by CSXT’s real-world need to maintain numerous timber bridge structures. The SFRR has no timber bridges.

of four-person B&B Crews, from four to eight. CSXT Reply at III-D-153-155 and Reply e-workpapers “SFRR B&B EMPLOYEE TABLE.xls” and “SFRR Bridge Maintenance Crews-Workforce.xls.”<sup>81</sup> However, CSXT provides no explanation whatsoever for why these large increases in field B&B staffing are necessary. CSXT also proposes a new, five-person Steel Crew – but again, it has not provided any rationale for adding this crew or what work it would perform that cannot be performed by the B&B crews or contractors (in the case of infrequent repairs to the steel bridge superstructures).

SECI Witness Crouch has been responsible for the annual inspection of, and planning of rehabilitation programs for, hundreds of railroad bridges every year for the past 18 years, and he is very familiar with the work effort required to make the necessary inspections and repairs. The fact that the SFRR’s bridges are being constructed new, with concrete and steel components and generally with longer spans than the existing CSXT bridges, minimizes the annual maintenance work required during the first ten years of operations. Thus Mr. Crouch’s proposed B&B staffing is very conservative.

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<sup>81</sup> The first of the cited workpapers also includes three employees who are part of the general office staff, discussed earlier, as well as the four B&B Supervisors who are part of the field staff (although not shown in the second cited workpaper).

Finally, CSXT proposes to add 22 Bridge Tenders, apparently to operate at least some of the eight movable bridges it claims the SFRR will have.<sup>82</sup> However, CSXT has provided no explanation of which bridges (or bridge types) would be manned by Bridge Tenders, the extent to which 24/7 positions are needed, or how CSXT arrived at the number of employees involved (22). In any event, as explained in Part III-F-5-b below, the SFRR actually requires only five movable bridges, several of which cross small waterways with light vessel traffic (and thus are unlikely to require opening except during daylight hours).<sup>83</sup> A newly-constructed, non-unionized railroad would not man these movable bridges with Bridge Tenders, which are anachronistic. Rather, it would provide for remote control of such bridges by the railroad's dispatcher for the territory involved, with the Coast Guard authorized to provide a telephone number or radio contact information so that a vessel approaching the bridge could contact the dispatcher to request that the span be moved.<sup>84</sup> The SFRR would follow this procedure and thus does not need any Bridge Tenders.

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<sup>82</sup> See CSXT Reply at III-F-79. The eight movable bridges proposed by CSXT include six bascule spans and two vertical lift spans.

<sup>83</sup> Part III-F-5-b contains a detailed, bridge-by-bridge analysis of the SFRR's movable bridges.

<sup>84</sup> See Koglin, Terry L., *Movable Bridge Engineering*, John Wiley & Sons, Inc. 2003 (copy of relevant pages included in Rebuttal e-workpaper "Movable Bridges.pdf"). This publication also describes several instances where existing movable span railroad bridges have been converted to remote control, thus eliminating the need for bridge tenders.

In summary, given the lack of any explanation of how CSXT's engineers arrived at their increased level of B&B field staffing, the Board should accept SECI's conservative staffing proposal for this function.

**c. Compensation for MOW Employees**

CSXT states that it has accepted SECI's compensation methodology for MOW employees, including fringe benefits and additives for travel/meals and small tools. CSXT Reply at III-D-146, 150, 153 and 154-55. CSXT posits much higher total MOW salaries only because of its much higher employee count.

On Rebuttal, SECI has revised its field MOW employee count upward by a total of four employees as described in earlier subsections. In addition, SECI's experts corrected a spreadsheet misalignment that applied salaries to specific positions, and changed the position codes for five positions to be consistent with CSXT's position codes. These changes are shown in more detail in Rebuttal e-workpaper "Rebuttal MOW costs.xls."

The revised total annual compensation for MOW personnel in the base year (excluding fringe benefits) equals \$24.9 million. *See* Rebuttal e-workpaper "Rebuttal MOW Costs.xls." Details of the revised MOW salary calculations are shown in Rebuttal e-workpaper "SFRR Salaries\_Reb.xls."

**d. Equipment**

CSXT has generally accepted SECI's listing of vehicles and other equipment for the SFRR's MOW personnel, and the purchase price/annual expense for such equipment. CSXT Reply at III-D-155-156. CSXT proposes to increase

the cost of equipment by approximately \$20 million annually (*Id.* at III-D-156), but this is largely a function of CSXT's increase in the number of MOW employees as all of the field employees and most of the general office employees require vehicles and/or equipment.

CSXT also asserts that SECI failed to provide for the expense related to SFRR employees' maintenance of SFRR buildings, and assigns 3 percent of the cost of buildings for such maintenance. In total, CSXT proposes to increase SECI's annual operating expense for maintenance of equipment and buildings by \$5.2 million. However, SECI provided a cost for building maintenance by contractors on Opening, equal to 2 percent of the cost of buildings. (This cost is shown in the Opening and Rebuttal MOW cost spreadsheets, cell H1197.) CSXT did not challenge this, and its proposal to add another 3 percent for building maintenance by SFRR employees effectively results in a double count of building maintenance costs.

CSXT also proposes to acquire work-train equipment to distribute ballast in connection with surfacing and shoulder-cleaning operations. *Id.* at III-D-157. However, the workpaper referenced by CSXT ("SFRR – MOW Work Trains.xls") simply details the annual and daily miles of surfacing and ballast cleaning and the number of work-train days involved; it does not specify the items of work-train equipment needed. Moreover, as described earlier, ballast will be delivered in railcars provided by contractors and the SFRR does not need work-train equipment of its own.

e. **Contract Maintenance**

CSXT accepts SECI's specification that various categories of maintenance such as track testing, rail grinding, etc. would be performed by contractors rather than by the SFRR's in-house maintenance forces. CSXT Reply at III-D-157. However, CSXT disputes SECI's calculation of the annual cost of (or failure to include) various items of contract maintenance (some of which are capitalized). Each category of contract maintenance addressed by CSXT is discussed in turn below.

**Track Geometry Testing.** CSXT has modified the track geometry testing frequencies specified by SECI on Opening slightly, in that all lines with densities greater than 30 MGT/year would be tested "at least twice per year." SECI Opening at III-D-81; CSXT Reply at III-D-158-159. SECI accepts the testing frequencies proposed by CSXT.

CSXT disputes SECI's geometry testing unit cost of \$40 per pass mile (on all main tracks), and revised it upward to \$59.76 per mile on the basis that track testing vehicles are unlikely to work eight hours per day as assumed by SECI Witness Crouch. CSXT Reply at III-D-159-60. However, \$40 per mile is a typical testing cost, and CSXT does not offer any specific evidence that would support a higher cost. Mr. Crouch's firm has contracted with Holland LP for rail geometry testing service, and Holland agreed to a minimum of eight hours of testing per day at the hourly rate of \$1,000 per mile, or \$1,000 per hour over the eight hours. See SECI Rebuttal e-workpaper "CHCRA Holland Contract.pdf." This supports Mr.

Crouch's cost of \$40/track mile for testing at a speed of 25 mph. Based on CSXT's comments concerning the total track miles to be tested, the revised total annual cost of track geometry testing is \$144, 164. The underlying calculation is shown in the footnote below.<sup>85</sup>

Ultrasonic Rail Testing. SECI agrees with CSXT that it overstated the number of miles of track that require ultrasonic rail testing annually. CSXT Reply at III-D-160. SECI also accepts CSXT's revised unit cost for this testing (\$157.86 per test mile. However, SECI disagrees with CSXT's statement that 5,310.9 track miles need to be tested annually (*id.* at III-D-161). The correct calculation of the annual miles to be tested, and the total annual cost, is as follows:

The total route miles (first main track miles) are tested once per year.  
The total route miles are 2,093.0.

The total route miles (first main track miles) carrying over 40 MGT (144 miles) are tested twice per year.

The total miles of other (second) main line tracks (750.1) are tested once per year.

The total number of track miles to be tested annually is 2,987.1 (2,093.0 + 144 + 750.1). The total annual cost is \$471,543.61 (2,987.1 x \$157.86)

Rail Grinding. SECI accepts CSXT's approach to rail grinding, including its total annual cost of \$1.9 million. See CSXT Reply at III-D-161-162.

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<sup>85</sup> Route miles (first main track) □ 30 MGT 1,332.0 x 1 test  
Route miles (first main track) □ 30 MGT 761.0 x 2 tests  
Secondary main lines (second main track) 750.1 x 1 test  
Total track miles to test annually: 3,604.1 miles x \$40.track mile =  
\$144,164.00

Yard Cleaning. CSXT asserts that SECI understated the annual cost of yard cleaning based on its workpapers, and that the correct amount should be \$100,913 rather than \$8,800 as proposed by SECI. CSXT Reply at III-D-163.

The \$8,800 figure shown on Opening is based on a quote obtained directly from CSXT's contractor, ARS, by telephone.<sup>86</sup> The number quoted for operating a yard cleaner was \$2,200 per day. The total annual costs posited by SECI was based on one day per yard, with four yard locations (the SFRR continues to have four principal yards that require annual cleaning), and remains correct.

Vegetation Control. SECI accepts CSXT's revision to the number of miles that require weed spraying (vegetation control) annually (3,408.5) and its proposed unit cost of \$106.26 per acre. CSXT Reply at III-D-163-164. However, CSXT has overstated the SFRR's annual vegetation control costs. Based on a 24' spraying width to cover the track zone, the number of acres requiring spraying per route mile is 2.91 (24 feet/mile x 5,280 feet/mile ÷ 43,560 square feet per acre = 2.91 acres/mile). At \$106.26 per acre, 3,408.5 miles of spraying, and 2.91 acres per mile, the total annual cost of spraying is \$1,053,965 – not \$1.5 million as asserted by CSXT.

Brush Cutting. CSXT disputes SECI's statement on Opening that little or no brush cutting would be required, and proposes 684 miles of brush cutting per year at a cost of \$0.9 million. CSXT Reply at III-D-165. CSXT does not

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<sup>86</sup> Crouch Engineering contacted CSXT's contractor for a direct quote because a reliable cost could not be calculated from the ARS/CSXT contract itself without knowing how many yards and track miles were involved.



explain the basis for its assertion that 684 miles should be brush-cut annually. Nor does it explain why its average unit cost for brush cutting (\$1,351 per mile) is appropriate for the SFRR. Unlike CSXT, whose right-of-way vegetation has grown up over a period of many, many years, the SFRR's right of way will be completely cleared during construction, and only grasses and weeds are likely to grow during its ten-year existence. These can be controlled by weed spraying. CSXT has not provided any evidence that the SFRR's cleared right-of-way will require brush cutting within the foreseeable future after construction is completed.

Ditching. SECI's MOW plan provides for four Gradalls and two track excavators (backhoes) to be used for ditching by the SFRR's in-house ditching crews. SECI Opening at III-D-71-72, 100. In addition, front-end loaders and bulldozers are available for shaping ditches. However, SECI conservatively provided for some contract ditching, based on a CSXT contract with Loram that was provided in discovery.

CSXT appears to ignore the in-house ditching crews, and disputes the amount for contract ditching costs used by SECI, claiming that the contract involved was extended at a higher price and does not include the cost of diesel fuel, hydraulic fluid and oil by the machinery used in the service. CSXT Reply at III-D-166-67. However, none of this information was provided to SECI in discovery, and thus cannot be used by CSXT to impeach SECI's Opening costs. Moreover, the Loram contract indicates that Loram offers 800 ditching hours per year for free

in return for being an Exclusive Contractor to CSXT.<sup>87</sup> SECI should be able to take advantage of the same provision, which justifies the original contract value used by SECI in determining the SFRR's contract ditching costs.

Shoulder Ballast Cleaning. Although very little shoulder ballast cleaning would be required in the SFRR's first ten years of operation, SECI included annual costs for shoulder ballast cleaning of \$236,536.20, based on a CSXT contract with Loram. See SECI Op. e-workpaper "MOW Costs.xls." On Reply, CSXT claims that SECI understated the Loram contract costs, and calculates annual ballast cleaning costs of \$1.6 million. CSXT Reply at III-D-168-169.

SECI's calculation of ballast cleaning costs was (and is) straightforward. The contract in issue provides a total cost of \${ } for ballast cleaning on the CSXT system for { }. The calculations used to derive SECI's annual cost of \$236,536 are shown in Rebuttal e-workpaper "Rebuttal MOW Costs.xls," tab "notes 6-30-09," and summarized in the footnote below.<sup>88</sup> Under the contract with Loram there is no need to make any assumptions about the number of hours worked or the number of miles cleaned per day per day.

With respect to CSXT's assertion that it incurs other costs not covered by the Loram contract, this may be true but CSXT provided no information or supporting evidence as to the magnitude of these additional expenses. Therefore,

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<sup>87</sup> See SECI Rebuttal e-workpaper "Bates No. CSX-SE-HC-018296.pdf."

<sup>88</sup> { }

SECI and the Board have no basis on which to evaluate how they were included in CSXT's development of ballast cleaning costs.

Crossing Repaving. On Opening SECI included a contract crossing repaving cost of \$1.425 million using a 10-year life for crossing paving (such that 10 percent of all crossings are to be repaved each year) and a unit cost of \$543.96 per track foot. SECI Opening at III-D-86.<sup>89</sup> CSXT accepts SECI's paving life/frequency and unit cost, but assert that SECI failed to account for 23,000 track feet of crossing paving and omitted detour signage and barricade costs. CSXT Reply at III-D-170.<sup>90</sup>

As for the "missing" track feet of crossing paving, CSXT's count of road grade crossings matches SECI's (which was based on the FRA's database of grade crossings). However, CSXT did not provide SECI with grade crossing data showing whether any particular crossing involved two tracks – and in fact, in its construction-cost calculations CSXT used the same feet of crossings that SECI used.<sup>91</sup> Nor did CSXT provide any information on signage and detours provided in discovery. In Mr. Crouch's experience, roadway signs for railroad grade crossing

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<sup>89</sup> As SECI noted (*id.*), these costs should be capitalized under the DCF model.

<sup>90</sup> CSXT states in its narrative that the cost of the additional 23,000 track feet of repaving is \$12.681 million, but then states that the total annual repaving costs for the SFRR are \$4.2 million. The first number appears to be a typo, and probably should have read "\$1.268 million."

<sup>91</sup> See CSXT Reply e-workpaper "Track Construction.xls, tab "Summary," cell D99.

work are provided by the state or other government agency responsible for the particular road, not the railroad.<sup>92</sup>

Given CSXT's failure to provide relevant data in discovery, and the fact that CSXT used the same number of crossing feet as SECI in its construction-cost spreadsheet, the Board should accept SECI's Opening cost for annual crossing repaving.

Equipment Maintenance. CSXT accepts SECI's calculation that the SFRR's annual cost of equipment maintenance would be 5 percent of the purchase price, but estimates the annual contract equipment maintenance cost at \$2.1 million. CSXT Reply at III-D-170-171. This estimate apparently is based on the additional equipment needed for the inflated MOW personnel that CSXT proposes to add. As indicated earlier SECI disagrees that any additional MOW personnel are needed, and CSXT has not provided any evidentiary support for its increased equipment maintenance cost. The Board should therefore accept SECI's Opening equipment maintenance cost of \$1.04 million.

Communications System Inspection and Repair. CSXT accepts SECI's methodology for determining communications system inspection and repair costs (2 percent of the original purchase cost). Based on a SFRR communications

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<sup>92</sup> The Emergency Notification signs mentioned by CSXT were funded by CSXT were funded by the federal government in a voluntary pilot program run by the FRA, and should not be included as a cost item for the SFRR.

system cost of \$38 million,<sup>93</sup> CSXT estimates the SFRR's annual communications contract cost to be \$0.7 million. CSXT Reply at III-D-171. SECI's Rebuttal communications system cost is \$37 million, which also produces an annual inspection and repair cost (rounded) of \$0.7 million.

Bridge inspections. On Opening SECI provided for contract structural-integrity inspection of seven of the SFRR's major bridges, a five-year inspection cycle, and a unit cost of \$8.94 per track foot. SECI Opening at III-D-88. CSXT raises the number of bridges requiring contractor structural integrity inspections to 19, and estimates the unit cost at \$25 per track foot. CSXT Reply at III-D-171-172.

SECI based the number of bridges requiring structural integrity inspections, and the unit cost per track foot, on the experience of Mr. Crouch. Mr. Crouch and his staff have performed numerous inspections of major river bridges and his staff at Crouch Engineering, and are familiar with the equipment needed and amount of time needed by trained personnel to make the inspections. Mr. Crouch provided, as supporting evidence for his equipment rental rate, an invoice for bridge inspection equipment.<sup>94</sup>

The seven SFRR major river bridges specified by Mr. Crouch as bridges requiring periodic structural integrity inspections are the bridges over 2,000

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<sup>93</sup> CSXT's narrative show a communications system cost of \$3.8 million, but this is obviously incorrect (a decimal appears to have been misplaced).

<sup>94</sup> See SECI Opening e-workpaper "Major Bridge Inspection Costs.pdf."

feet in length. These include the Ohio River bridge at Henderson, KY, MP 00H 315; the bridges on the Baltimore Division at MP CFP 132 and MP CFP 79.30; and the bridges on the Florence Division at MP A 477.80, MP A 346.90, MP A 280.5, and MP A 82.00. The eight bridges CSXT proposes to add to this list are the bridge on the Baltimore Division at MP CEP 114.54; the bridges on the Florence Division at MP A 361.7, MP A 393.7 and MP SAC 19; the bridge on the Jacksonville Division at MP A 649.2; the bridges on the Nashville Division at MP 00J 123.1 and MP 00O 185.0; and the bridge on the Huntington-C&O Division at MP BS 300.9. CSXT has provided no evidence other than its expert's naked opinion to justify adding these additional bridges to the list – and in fact, it did not directly challenge Mr. Crouch's 2,000-feet criterion.

Nor did CSXT provide anything in discovery, or any evidence such as its own historical costs for bridge inspections, to support its estimated inspection cost of \$25 per track foot or its absurd inspection rate of 200 feet per day.<sup>95</sup> Indeed, CSXT did not provide any proof that it even uses outside contractors to perform any bridge inspections over and above what its internal engineering staff performs on an annual basis. In short, Mr. Crouch's proposed contract bridge inspection cost is more than adequate to support the SFRR's trained and efficient in-house bridge staff in performing annual inspections.

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<sup>95</sup> See CSXT Reply e-workpaper "SFRR Bridge Inspection Costs.pdf." In Mr. Crouch's experience, a qualified contracting team can inspect at least 2,000 track feet of bridge(s) per day.

Bridge Contract repairs. CSXT accepts SECI's methodology and unit cost for determining the annual cost of contract bridge repairs (\$4,000 per bridge with repairs performed on each major bridge every five years). CSXT Reply at III-D-172. However, CSXT again assumed that 19 bridges would require contract maintenance, rather than the seven posited by SECI Witness Crouch. The Board should accept SECI's costs because CSXT has not provided any evidence supporting the need to inspect or maintain any bridges over and above seven.

Building maintenance. Once again, CSXT accepted SECI's methodology for calculating the cost of contract building maintenance (2 percent of the total cost of constructing the buildings), but increases the annual cost because it increases the FRR's building costs. CSXT Reply at III-D 172. SECI responds to CSXT's evidence on the SFRR's building construction costs in Part III-F-7 below. The revised total building construction cost on Rebuttal is \$17.7 million. Two percent of this cost is \$353,409.89, which is the contract building maintenance cost that should be accepted by the Board.

Snow removal. CSXT rejects SECI's estimated snow removal costs of \$10,000 annually (SECI Opening at III-D-89-90) as unsupported. CSXT Reply at III-D-173. However, CSXT's estimate that the SFRR would incur 5 percent of CSXT's annual contract snow removal costs, or \$45,000, is also unsupported. Mr. Crouch believes his estimate is reasonable given the temperate climate in which most of the SFRR system is located (snow accumulation is rare in Tennessee, Alabama, Georgia, South Carolina, Florida, coastal North Carolina and coastal

Virginia). The SFRR's field maintenance forces light switch heaters and perform switch sweeping and other light snow removal as part of their normal duties. In Mr. Crouch's experience as a track supervisor in Virginia and performing other MOW work in Appalachia, contract forces are not typically used for snow removal and this task normally falls on the track crews. On occasion, ballast regulators are used by the field MOW forces to sweep track.

Accidents and Wreck Clearing. SECI provided an annual contract cost for repairing damage from derailments and similar accidents of \$1,680,884 based on 2008 FRA accident reports for CSXT on a state-by-state basis, and an annual cost for clearing wrecks of \$778,591 based on the costs shown in CSXT's 2008 R-1, for a total annual cost of \$2,459,465. SECI Opening at III-D-91-92. CSXT argues the annual cost should be increased to \$3.6 million, or 10 percent of the 2008 CSXT derailment cost of \$36 million. CSXT Reply at III-D-173-174.

SECI submits that its calculation of annual contract costs for accidents and wreck clearing is preferable to CSXT's, as it takes into account state-by-state accident costs as reported to the FRA. With respect to the \$36 million in system-wide derailment costs that CSXT incurred in 2008, CSXT has not provided any information that can be used to attribute any of these costs to the lines (or geographic regions) replicated by the SFRR. Since CSXT did not provide any evidence either supporting its position or disputing SECI's calculations, the costs reflected in SECI's Opening Evidence should be used.



Storm debris removal. After noting that CSXT did not provide any information on storm clean-up in discovery, and based on his experience with weather conditions and storms in the geographic regions in which the SFRR's lines are situated, SECI witness Crouch provided \$10,000 for annual storm debris removal costs. SECI Opening at III-D-90. CSXT estimated the SFRR's annual storm debris removal cost at \$60,000, or 10 percent of its storm debris removal costs incurred in 2008 as a result of Hurricane Gustav. CSXT Reply at III-D-175. However, CSXT does not indicate where the damage from this hurricane occurred, or its extent. In fact, Hurricane Gustav hit the United States at Cocodrie, LA,<sup>96</sup> and did not impact the route of the SFRR at all. It is inappropriate to base storm debris removal costs on a single event in a single year that did not impact any lines replicated by the SFRR. Local track crews and Assistant Roadmasters typically handle normal storm debris cleanup, and the \$10,000 annual contract cost proposed by Mr. Crouch should be more than sufficient.

Washouts. CSXT states, in passing, that SECI has provided no support for its annual contract cost for washouts of \$20,000. SECI Opening at III-D-92; CSXT Reply at III-D-173-174. Washouts typically occur when concrete culverts separate at the joints and cause the roadbed to fail, or when a major storm event causes high runoff flows. Mr. Crouch used metal pipe culverts for the most part, which typically do not experience this type of failure. Also, the SFRR's culverts are designed for present-day runoff coefficients and drainage area

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<sup>96</sup> See SECI Rebuttal e-workpaper "Hurricane\_Gustav.pdf."

characteristics, whereas existing railroads such as CSXT have to deal with undersized culverts built many years ago. Land characteristics and runoff coefficients have changed for the worse over time due to increasing land development – forests have been replaced with parking plots and agricultural fields, which concentrate storm water runoff much faster than when the lines were originally built.

Environmental Cleanup. On Opening, SECI did not provide any costs for environmental cleanup other than the annual cost of replacing the protective drip pads at locomotive fueling locations. This was based in large measure on CSXT's failure to provide any information in discovery on environmental clean-up costs, either generally or for the lines being replicated by the SFRR. SECI Opening at III-D-92-93. CSXT proposes an annual environmental cleanup cost equal to 10 percent of CSXT's 2008 system-wide environmental cleanup costs of \$23 million, or \$2.3 million. CSXT Reply at III-D-175.

CSXT did not provide any documentation for its costs, the reasons they were incurred, or the locations where they were incurred. Nor did CSXT explain the basis for its assumption that the SFRR would incur 10 percent of CSXT's system-wide annual environmental cleanup costs (the same percentage it used to assign costs for a localized hurricane storm cleanup event to the SFRR), especially given that the SFRR carries an average of only 62% of the traffic that

CSXT carries over the lines being replicated. The Board should reject CSXT's proposed annual contract costs for environmental cleanup as unsupported.

**f. Capital Program and Annual Operating Expense**

SECI allotted two-thirds (66%) of the salaries of the Vice President-Engineering and his direct reports to operating expense, with the remainder to be capitalized. SECI allotted 100% of the field MOW staff salaries to operating expense. SECI Opening at III-D-104. CSXT states that it has also allotted 66% of these salaries to operating expense. CSXT Reply at III-D-29. However, in discussing the general office personnel responsible for MOW functions – which includes a Chief Engineer-Maintenance-of -Way (who presumably, and illogically, reports to the Vice President-Engineering) and other “Chief Engineers” responsible for specific MOW functions – CSXT assigns salary percentages varying from 30% to 90% to operating expense. *Id.* at III-D-140-146.<sup>97</sup>

For example, CSXT's Chief Engineer – Communications & Signals is the equivalent of SECI's Communications & Signals Engineer. CSXT assigns 60% of this Chief Engineer's time to operating expense activities, compared with 66% for SECI's equivalent position. CSXT provides both a Chief Engineer and an Assistant Chief Engineer to the B&B function, but discusses only the Assistant Chief Engineer-B&B in its text (*id.* at III-D-142). CSXT assigns 50% of this employee's time to operating expense, compared with 66% for SECI's equivalent

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<sup>97</sup> As explained earlier, the Chief Engineer and Division Engineer positions assigned by CSXT add unnecessary layers of supervisory management to the SFRR's MOW staff.

position of Bridge Engineer. For various comparable manager positions in the MOW general office (such as the Manager of Mechanical Operations, discussed at CSXT Reply III-D-143), CSXT assigns varying proportions of their time to operating expense, both above and below the 66% assigned by SECI.

Given the differences between the parties on the general office staff and the varying percentages of their time (and salaries) assigned to operating expense by CSXT, the Board should accept SECI's proposal to assign a flat 66% of the general office staff salaries to operating expense.

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In summary, SECI's revised annual MOW expense for the SFRR equals \$54.3 million at the 2009 level. *See* SECI Rebuttal e-workpaper "Rebuttal MOW Cost.xls" which details the various items of expense.

## **5. Leased Facilities**

As SECI noted on Opening, the SFRR has no leased track facilities. However, it operates over two NS-owned joint facilities: the NS Loveridge Secondary (part of the MGA lines) between Brownsville (CP Brown), PA and Rivesville/Loveridge Mine, WV, and an NS connecting track that enables the SFRR to serve Chaparral Steel near Petersburg, VA.

CSXT accepts these joint facilities. However, with respect to the Loveridge Secondary, CSXT states that SECI did not include any movements over that line to/from Consol 95, Grafton or Haywood, WV in calculating the payments

due NS under the Monongahela Usage Agreement.<sup>98</sup> On Rebuttal, SECI has included usage payments for trains operated by the SFRR with its own crews over the Loveridge Secondary.<sup>99</sup>

## **6. Loss and Damage**

CSXT has accepted SECI's methodology for calculating the SFRR's annual loss and damage expense. SECI Opening at III-D-106; CSXT Reply at III-D-176. The annual cost for this item reflects the SFRR's annual tonnage. The annual tonnage has been revised on Rebuttal, as discussed in Part III-A-2 above. Thus the SFRR's loss and damage expense has also been revised. The revised cost is shown in SECI Rebuttal e-workpaper "2008 SFRR Loss and Damage\_Reb.xls."

## **7. Insurance**

On Opening, SECI calculated the SFRR's annual insurance cost using CSXT's 2008 insurance ratio of 1.93 percent of operating expenses (the latest

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<sup>98</sup> NS operates certain SFRR trains between Loveridge Mine and Brownsville using NS crews. The SFRR operates trains between Loveridge Mine and Grafton using its crews; these trains use the Loveridge Secondary between Loveridge Mine and Rivesville (Catawba Jct.), WV. Trains that operate between Consol 95, Grafton or Haywood and Brownsville are also operated by the SFRR, with its crews; these trains use the portion of the Loveridge Secondary between Rivesville and Brownsville. It is the trains operated by the SFRR with its own crews for which SECI allegedly omitted the usage payments to NS.

<sup>99</sup> It should be noted that CSXT correctly states (CSXT Reply at III-D-176 n. 224) that the trackage rights agreement covering the former MGA lines calls for adjustment of the rates in July of each year, which means the 4Q04 rates and the 1Q09 rates are the same. In spite of this statement, review of CSXT's workpapers reveals that CSXT indexed the rates, as adjusted to July 2008, to 1Q09 levels, thus overstating the trackage rights payments

available). SECI Opening at III-D-106. CSXT argues that the SFRR is far smaller than a major Class I railroad like CSXT, and could not achieve the same economies of scale as a major railroad. CSXT asserts that because KCS, Genessee & Wyoming and RailAmerica's revenues are more equivalent to the SFRR's revenues than CSXT's, they are a more apt benchmark for SFRR insurance costs than CSXT and their average 2008 insurance ratios (5.99% of operating expenses) should be used to calculate the SFRR's insurance costs. CSXT thus increases the SFRR's annual insurance costs from \$5.0 million to \$31.68 million. CSXT Reply at III-D-177.

CSXT conceptually adopts the argument presented by BNSF and accepted by the Board in *WFA/Basin* and *AEP Texas* regarding insurance expense, *i.e.*, that use of the Defendant's insurance expense as a percentage of other operating expense is inappropriate for a SARR. However, in both of those proceedings, BNSF argued and the Board accepted the use of an average insurance percent for *Class I* carriers with revenues of less than \$1.0 billion is appropriate for a SARR. Rather than using only Class I carriers with revenues similar to the SARR, CSXT relies on KCS and two carriers, Genessee & Wyoming ("GW") and RailAmerica ("RA"), which both are holding companies that operate numerous shortline and regional carriers, thus ignoring the insurance expenses of both Canadian National and Canadian Pacific's operations in the United States.

GW's and RA's insurance experience is not comparable to the SFRR's for two reasons. First, G&W and RA are comprised of 62 and 40 regional and

shortline carriers, respectively. Because these carriers are a conglomerate of small carriers spread across the country, each with its own unique issues that could affect insurance rates, they are not representative of a Class I carrier such as the SFRR with more than \$1.0 billion in revenues whose lines form a single, contiguous system. Second, the numerous carriers that make up the GW and RA in aggregate have far lower revenues than the SFRR. In 2008, the aggregate revenues of GW and RA equaled \$601,984 and \$421,922, respectively, while the SFRR revenues in 2009 equaled \$1,048 million, *i.e.*, nearly double the combined revenues earned by the dozens of railroads comprising either GW or RA.

On Rebuttal, SECI relies on the Class I carriers earning similar revenues to those of the SFRR, *i.e.* KCS, and the operations of Canadian National and Canadian Pacific in the United States. The average insurance rates paid by these three carriers in 2007 and 2008 combined equals 3.51 percent of operating expenses, which is comparable to the insurance ratios accepted by the Board in *WFA/Basin* and *AEP Texas* of 3.2 percent and 4.69 percent, respectively.

#### **8. Ad Valorem Tax**

To calculate ad valorem taxes, SECI calculated the amount of tax that CSXT paid per route mile in each of the twelve states and the District of Columbia in which the SFRR operates and applied these amounts to the SFRR's route miles in these jurisdictions. SECI Opening at III-D-106-107. CSXT accepts SECI's methodology for three states (Indiana, Pennsylvania, Virginia) and the District of Columbia, which use a version of the "summation" method for determining the

market value to railroad property for tax assessment purposes, but rejects SECI's methodology for the remaining nine states (Alabama, Florida, Georgia, Kentucky, Maryland, North Carolina, South Carolina, Tennessee and West Virginia) which CSXT suggests use the "unit" method for valuing railroad property for tax purposes. CSXT Reply at III-D-178-179.

CSXT characterizes SECI's method for calculating ad valorem taxes as "simplistic" and "crude" and claims that SECI's method "grossly understates the taxes SFRR would pay in the real world."<sup>100</sup> CSXT Reply at III-D-178. Yet CSXT adopts SECI's "simplistic" method of calculating ad valorem taxes for three states and the District of Columbia. CSXT claims the "unit" methodology, which it uses for the remaining nine states, more accurately represents the actual amount the SFRR would pay for ad valorem tax in these states. This increases the ad valorem tax from the \$14.1 million included by SECI on Opening to \$23.1 million.

CSXT's "unit" method allegedly allocates a going concern value to each of the states, to which CSXT then applies individual tax rates for each state to determine the ad valorem tax for the SFRR. To accomplish this, CSXT calculated a going concern value by dividing the SFRR's annual net income by the 11.08 percent cost of capital and allocated the resulting going concern value to each state based on the same SFRR route-mile calculation used by SECI.

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<sup>100</sup> It should be noted that the method employed by SECI to calculate ad valorem taxes for the SFRR is identical the method accepted by the Board in every previous stand-alone cost proceeding.



To test CSXT's "unit" method, SECI's experts applied it to the aggregate CSXT system net income to determine its going concern value, allocated that amount to CSXT's total route miles in each of the SARR states, and applied the same tax rates used by CSXT in its analysis to yield an effective ad valorem tax for all of CSXT's system in each of the nine states. This "unit" method ad valorem tax for all of CSXT's system in each state was compared to the actual ad valorem tax paid by CSXT in the individual states. Not surprisingly, the results show that CSXT's "unit" method grossly *overstates* the amount that CSXT would have to pay in ad valorem taxes. CSXT's unit method applied to its system in the nine states produces an ad valorem tax liability of \$124.7 million compared with CSXT's actual ad valorem tax liability in these states of \$69.0 million, an overstatement of \$55.6 million or 80.7 percent of the actual tax paid by CSXT.<sup>101</sup>

SECI continues to use its "simplistic," but accurate, method of calculating ad valorem taxes on Rebuttal.

**9. Other**

**a. Manifest Line Haul Credit**

On Opening, SECI calculated a manifest line haul credit, to be applied as an offset to the SFRR's operating expenses, to reflect the costs incurred in handling non-SFRR (*i.e.*, CSXT) merchandise and intermodal cars/containers on the SFRR's trains. The cost credit was based on the operating cost credit {

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<sup>101</sup> See SECI Rebuttal e-workpaper "Ad Valorem Tax - Unit Method Comparison.xls."

} . See SECI Opening at III-A-23-25 and III-D-107-108.

On Reply, CSXT goes to some length to disparage SECI's manifest line haul credit concept, but ultimately accepts it for purposes of this case. CSXT Reply at III-C-16-18 and III- D-179-184. However, CSXT purports to correct or "clean up" SECI's non-SARR traffic data by removing all empty cars and containers, eliminating the cost credit for flat cars carrying loaded intermodal containers, and eliminating non-revenue cars handled on local trains where the CSXT origin and destination were the same. *Id.* at III-D-182-183. The net result is to reduce the manifest line haul credit from \$108.6 million (SECI) to \$73.8 million (CSXT).

CSXT removed from the SFRR traffic group all non-SARR empty cars because "logic dictates that CSXT would not pay the SFRR for moving empty cars where CSXT is receiving the revenue for the loaded movement." CSXT Reply at III-D-183. The problem with CSXT's approach is two-fold. First, the manifest line-haul credit is calculated based on gross ton-miles which necessarily include the tare weights of empty cars. Exclusion of non-SARR empty cars from the SFRR system diminishes the SECI's gross ton-miles and thereby the revenue credit available to the SFRR.

Second, as CSXT itself acknowledges, "Board/ICC precedent has made it clear that it is the prerogative of the complaining shipper to select what

traffic to include in its SAC presentation, and SECI clearly included the non-revenue traffic on its SFRR trains.” CSXT Reply at III-D-182. Based on this precedent, CSXT is not at liberty to remove the non-SARR empty cars from the SFRR traffic base in an effort to reduce the SFRR traffic and associated manifest line-haul credit.

**b. Costs Related to Intermediate and Yard/Local Switching**

As described in Part III-C-1 above, the continuing problems with the waybill, car event and train movement data CSXT produced on discovery prevented SECI from modeling (and thus determining the operating costs for) the intermediate, local and yard switching activities that CSXT performs with respect to cars containing general freight traffic included in the SFRR’s traffic group. Recognizing that the SFRR would perform such switching activities notwithstanding their inability to model them, SECI’s experts included I&I and yard/local switching cost additives to account for the cost of performing them in all instances where they could determine that such activities occurred. The total cost additive applied in 2009 was \$7.4 million for I&I switching and \$9.3 million for yard and local switching, or a total of \$16.7 million. SECI Opening at III-D-108-109.

CSXT rejects SECI’s treatment of I&I, yard and local switching costs based on historic URCS costs and internal transfer prices, and instead purports to include the direct costs associated with these activities by creating a new operating plan involving hypothetical new blocking of cars and hypothetical new trains in which the SFRR would move them, and developing the “forward-looking costs of

the associated switching services using the MultiRail computer program and RTC modeling of the resulting SFRR operations. CSXT Reply at III-D-3-8 and III-D-184. However, for the reasons explained in Part III-C-1 above, CSXT's new operating plan and the associated new blocking schemes and switching operations must be rejected as inconsistent with the service requirements of the SFRR's non-coal customers. SECI's I&I and yard/local switching cost additives are reasonable surrogates for the associated switching activities, and should be accepted by the Board. Moreover, as conclusively demonstrated in III-C-1 above, SECI's switch additive based on CSXT's historic costs substantially overstates the SFRR's cost of providing intermediate (I&I) and yard train service.

CSXT claims that SCEI's switching cost additive fails the stand-alone cost test because it is not based on "forward looking costs," but instead on CSXT's historic URCS costs and transfer prices included in the TSA. CSXT's claim is ill-founded because it ignores several relevant facts. First, nearly all of the operating unit costs used in a stand-alone cost analysis are historic railroad costs, which are tied either to the defendant's R-1 Annual Report, its URCS costs or historic cost information provided in discovery. A few examples include, historic crew wages, historic prices (or lease rates) paid for locomotives and railcars, actual historic locomotive servicing unit prices, and historic fuel consumption rates. For CSXT to claim that historic prices cannot be used for switch expenses is simply not consistent with how costs are developed for most of the SFRR's operating expenses.

With respect to CSXT's claim that the transfer prices from the TSA are not forward looking and therefore inappropriate for use here, as with the use of Annual Report Form R-1 and URCS unit costs, the TSA costs are historic costs and historic costs are used in all stand-alone cost analyses. In addition, the TSA costs represent the actual costs incurred by CSXT in its relationship with CSXI. It is clear from review of the TSA that the basis for the transfer payments between the parties is the carrier's actual cost of providing the service. As such, these payments are appropriate for use in the stand-alone cost analysis.

Finally, in spite of CSXT's objection to the use of the TSA costs, CSXT adopts for use in its own evidence some of the costs and payments calculated from the TSA, including for example the manifest line-haul credit, discussed above, and the intermodal lift and ramp cost contained in the TSA, discussed below.

**c. Intermodal Lift and Ramp Cost**

SECI included intermodal lift and ramp costs in connection with placing and removing intermodal containers and trailers on/from intermodal trains. The lift costs were based on the amount CSXT pays contractors for lift services, and the ramp costs were based on the amount CSXI reimburses CSXT for providing ramp services under the TSA. SECI Opening at III-D-109-110.

CSXT accepts the concept of using third party costs to develop intermodal lift and ramp costs, but claims SECI did not include the full cost of the services which includes costs not reflected in the payments to a third party. CSXT Reply at III-D-8-11 and 184. The net result of CSXT's expense additions is to

increase SECI's proposed total 2009 intermodal lift and ramp cost from \$11.9 million to \$20.3 million.

CSXT makes three modifications to SECI's intermodal lift and ramp costs. First, CSXT accepts SECI's use of the cost of lifts and ramps shown for St. Louis, developed from data supporting the TSA payments, equal to \${

}. However, CSXT states that the documents supporting the TSA also include contractor lift and ramp costs in Cleveland, and develops a weighted average cost per lift for events at these two cities which equals \${ } and applies this to events on the SFRR.

SECI did not include the contractor costs from Cleveland as they are not representative of the average lift and ramp costs that would be experienced on the SFRR. Review of the CSXT workpaper supporting the Cleveland lift and ramp costs shows that a substantial portion of those costs { }, which will not be incurred at the locations where most of the lift and ramp events occur on the SFRR, such as Jacksonville, FL, Charleston, SC and Atlanta, GA. Clearly, high cost lift and ramp costs experienced in Cleveland {

} are not relevant to the SFRR lift and ramp costs. SECI continues to exclude the Cleveland lift and ramp costs from its Rebuttal calculations.

Second, SECI included \${ } per lift for terminal costs related to car inspections, terminal police, security, yard switching, yard switching fuel and property lease expense. This amount is based on *all* such costs that are included in

the workpapers supporting the TSA. On Reply, CSXT included an additional amount of \$ { } per container for security, outside switching and car inspection cost incurred by CSXI but not included in the TSA costs. CSXT's underlying workpapers show that the majority of these additional costs occur at numerous locations throughout the CSXI system which are not close to the SFRR system, including locations such as Bedford Park and Chicago, IL; Kearney, Little Ferry and North Bergen, NJ; and Buffalo and Syracuse, NY. The CSXI expense data is included for all of these locations combined, but no corresponding location specific event data is provided.

SECI has not included the CSXT's additional cost per container because the underlying costs are not included in the TSA, and thus are not part of the amount reimbursed between the two companies. Thus they would not be incurred by the SFRR, which steps into the shoes of CSXT in its relationship with CSXI. Moreover, even if it were appropriate to include this incremental \$ { } per container, SECI is unable to adjust CSXT's added cost per container to remove the expense associated with unrelated locations because CSXT failed to provide the units associated with these locations. Therefore, SECI can only adjust the numerator to remove the unrelated expense, but not the denominator to remove the unrelated events.

The third adjustment made by CSXT to SECI's lift and ramp cost is to apply the switching, security and inspection cost to all containers moving through each intermodal facility, not just those containers and trailers receiving lift

or ramp services at a given intermodal facility. SECI accepts CSXT's argument that this unit cost should be applied on a per container basis and not just to lift and ramp events. SECI has made this adjustment in calculating intermodal lift and ramp costs on Rebuttal.

**d. Costs Related to Rerouted Traffic**

CSXT has accepted the two groups of internally rerouted traffic described at pp. III-D-110-111 of SECI's Opening Narrative, and also accepts SECI's conclusion that CSXT will not incur any increased off-SARR costs with respect to these reroutes. CSXT Reply at III-D-184-185. However, CSXT asserts that SECI has engaged in external rerouting of several coal movements, and improperly rerouted certain non-coal revenue traffic originated/received by the SFRR north of Pembroke, NC (on the SFRR's East Division) to points north of Atlanta/west of Nashville (on the SFR's West Division). *Id.*

SECI demonstrates that there are no additional coal reroutes in Part III-A-1 above. It also has responded to CSXT's arguments concerning the routing of non-coal traffic between points north of Pembroke and points north of Atlanta/west of Nashville in Part III-A-1. That discussion will not be repeated here.

**e. EVWR Car Costs**

In the final section of its Reply Narrative on the SFRR's operating costs, CSXT asserts that SECI neglected to include, in its calculation of operating expenses, payments to the Evansville & Western Railroad ("EVWR") for the carload fee for coal traffic originated by the EVWR at the Pattiki Mine in Illinois



and delivered to the SFRR at Evansville, IN for movement to SGS at Bostwick, FL.

*Id.* at III-D-185. However, as discussed in Part II-A above, SECI did include payments to the EVWR for carload fees in the form of revenue divisions payments. These payments represent an offset to the SFRR's revenues. A double-count would result if, in addition to the divisions offset, the SFRR paid the EVWR carload fees directly.

**III-E Non-Road  
Property Investment**

### **III. E. NON-ROAD PROPERTY INVESTMENT**

In Part III-E of its Reply Narrative, CSXT states that it accepts SECI's Opening assumptions concerning the purchase of the SFRR's road locomotives and the lease of switching/work train locomotives and freight cars (to the extent the latter are not provided by the shippers themselves). CSXT also states that it accepts (at the line item level) SECI's assumptions concerning the leasing or purchasing of other equipment, such as company vehicles, maintenance-of-way equipment, and computers and related hardware.

CSXT also accepts the elements of the SFRR's system and operating Plan, as developed by SECI, calling for the SFRR to operate over two NS-owned joint facilities. However, with respect to one of these joint facilities (the so-called MGA lines in Pennsylvania and West Virginia), CSXT asserts that in addition to making the required payments to NS for operations over these lines, the SFRR should pay 50 percent of the replacement cost of the MGA lines "to cover the road ownership portion of the CSXT Monongahela Railway operating rights not otherwise covered by the operating payments made to NS." Reply Narr. at III-E-2.

This is a repeat of an argument that CSXT made in Part III-B-1 of its Reply Narrative. SECI responds in detail to this argument in Part III-B-1-b of this Rebuttal Narrative. To summarize, NS acquired the MGA lines as part of the Conrail control transaction approved by the Board in Finance Docket No. 33388. Under the agreements implementing and governing CSXT's joint use of the MGA lines, the only "road ownership" cost CSXT is required to pay is one-half of any capital improvements to

those lines made *after* NS and CSXT implemented the Board-approved joint use rights. Nothing in these agreements (or in the Board's decision approving the Conrail control transaction) required CSXT to pay any portion of the cost of acquiring the MGA lines from Conrail. The SFRR steps into CSXT's shoes under its agreement with NS covering joint use of the MGA lines, and requiring the SFRR to pay any "road ownership" costs (other than a 50 percent share of capital improvements made after the SFRR became a surrogate party to the joint use agreement) would impose an improper entry barrier on the SFRR.

**III-F Road Property  
Investment**

### **III. F. ROAD PROPERTY INVESTMENT**

On Opening, SECI presented feasible and well supported road property investment costs for the SFRR. SECI's Opening costs included an unprecedented \$921 million for land acquisition and real-world costs for common earthwork and several other roadbed preparation items, all of which were lower than comparable Means Handbook unit costs. Otherwise, SECI's Opening road property investment costs were generally consistent with those presented in other SAC cases.

Typical of the approach taken by defendant railroads in other SAC cases, CSXT asserts that SECI's costs are "riddled" with flaws that require massive increases in road property investment.<sup>1</sup> As explained below, CSXT's Reply Evidence is not adequately supported. Moreover, CSXT's unit costs are largely the product of CSXT's distaste for the real-world unit costs utilized by SECI. In addition, CSXT's road property investment costs are inflated due to its inclusion of costs to build the NS-owned MGA, which the SFRR is not building. See Part III-B-1 for additional details. For all of the reasons set forth in this Part, the Board should reject CSXT's road property investment costs and accept those presented by SECI on Rebuttal, as shown in Rebuttal Table III-F-1.

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<sup>1</sup> CSXT did note one error in SECI's favor related to bridges. The correction accounts for the modest reduction in road property investment costs on Rebuttal.

**REBUTTAL TABLE III-F-1**  
**SFRR ROAD PROPERTY INVESTMENT COSTS**  
(millions)

	<b>Item</b>	<b>SECI Opening</b>	<b>CSXT Reply</b>	<b>SECI Rebuttal</b>
1.	Land	\$ 921.1	\$ 2,408.3	\$ 921.1
2.	Roadbed Preparation	1,072.0	1,954.3	1,078.7
3.	Track Construction	1,950.5	2,373.8	1,967.7
4.	Tunnels	261.3	429.4	261.3
5.	Bridges	819.1	1,485.2	594.1
6.	Signals & Communications	227.0	367.5	271.1
7.	Buildings & Facilities	27.2	131.2	35.4
8.	Public Improvements	Included Above	\$44.9	Included Above
10.	Subtotal	4,357.1	\$6,786.4	4,203.3
11.	Mobilization	117.6	237.5	119.5
12.	Engineering	435.7	678.6	420.3
13.	Contingencies	491.0	770.3	473.7
14.	<b>Total Road Property Investment Costs</b>	<b>\$ 6,322.5</b>	<b>\$10,881.1</b>	<b>\$ 6,131.9</b>

**1. Land**

On Opening, SECI's real estate witness, Stuart Smith, estimated that the SFRR's right-of-way, excluding easements, would cost an unprecedented \$921 million to acquire. Mr. Smith's valuation considered all segments of the railroad, particularly the major urban centers such as Washington, DC. In addition, Mr. Smith toured most of the route, and where access to the lines being replicated was not possible, he reviewed other data such as aerial maps. He also consulted with various local appraisers. On Reply, CSXT has raised the land acquisition costs well beyond the bounds of reasonableness. In addition, as explained in detail

below, the way CSXT reached these new heights is simply untenable. Thus, SECI has continued to use its Opening land valuation.<sup>2</sup>

**a. CSXT's Methodology Leads to a Highly Skewed Result**

CSXT's \$2.4 billion land acquisition cost is unsupportable. CSXT's real estate expert, Arnold Tesh,<sup>3</sup> did not perform any independent analysis on over 90 percent of the SFRR's right-of-way when preparing his Reply land valuation. *See* CSXT Reply at III-F-22. Mr. Tesh evaluated the right-of-way only in some of the metropolitan areas traversed by the SFRR.<sup>4</sup> Even though he did not review 20,535 of the 22,219 acres comprising the SFRR right-of-way, Mr. Tesh nevertheless concludes that the SFRR's land costs should be upwards of \$2.4 billion – almost two and a half times SECI's Opening costs. *See* CSXT Reply at III-F-22.

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<sup>2</sup> SECI's land valuation were increased by just over \$14,000 to accommodate the additional 0.60 route mile that were added to the SFRR on Rebuttal.

<sup>3</sup> On Reply, CSXT describes Mr. Tesh as a "licensed real estate appraiser with the highest designations available in his field." CSXT Reply at III-F-24. In fact, Mr. Tesh's designation as a Counselor of Real Estate is not the "highest designation" available in real estate appraisal. In the United States, the highest real estate appraisal designation is the "MAI" designation, which Mr. Tesh does not hold. *See* Appraisal Institute Professional Designations, [http://www.appraisalinstitute.org/designations/MAI\\_Designations.aspx](http://www.appraisalinstitute.org/designations/MAI_Designations.aspx). Mr. Smith, on the other hand, does hold an MAI designation. *See* Part IV of SECI's Opening Evidence.

<sup>4</sup> *See* CSXT Reply at III-F-19. Mr. Tesh reviewed the portions of the SFRR's right-of-way only in Atlanta, Charleston, Chattanooga, Jacksonville, Nashville, the outskirts of Pittsburgh, Richmond, Savannah, and Washington, D.C.



On Reply, CSXT only offers generalized criticisms of SECI's methodology and its valuation of the Savannah, GA and Rockville, MD portions of the right-of-way. Mr. Tesh does not offer any substantive explanations for why his valuation of the portions of the SFRR's right-of-way in Richmond, VA, the outskirts of Pittsburgh, PA, Nashville, TN, Jacksonville, FL, Chattanooga, TN, Charleston SC, or Atlanta, GA are so much higher than Mr. Smith's valuations. In lieu of an explanation, CSXT merely offers a table displaying Mr. Tesh's valuation results for various urban areas on the SFRR's route. *See* CSXT Reply at III-F-20. It is particularly puzzling that CSXT provides such little discussion of its astronomical pricing of the Washington, D.C. portion of the right-of-way, which Mr. Tesh valued at nearly *\$1billion*.<sup>5</sup> CSXT Reply at III-F-20.

A review of Mr. Tesh's valuation for the portions of the right-of-way that traverse Rockville, MD and Savannah GA (the only locations he discusses in detail) showcases his methodological flaws, analytical inconsistencies, and utilization of irrelevant comparables, all of which resulted in inflated prices. Similarly, Mr. Tesh's valuation for Atlanta, GA, Chattanooga, TN, and Richmond, VA exhibited the same problems that plagued Mr. Tesh's valuation of Rockville and Savannah.

On Reply, CSXT criticizes Mr. Smith's valuation methodology. Mr. Smith's methodology, however, is consistent with established methodologies and

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<sup>5</sup> CSXT only discusses the valuation of Rockville, Maryland, a suburb of Washington.

appraisal practices. Ironically, CSXT's criticisms simply serve to further highlight CSXT's own methodological inconsistencies, such as its witness's erroneous determination of highest and best use ("H&BU"); his inconsistent and incomplete "parcel-by-parcel" analysis; and his use of inappropriate comparables. These methodological problems result in unnecessary upward pricing pressures that inflate CSXT's valuation figures, and also result in dramatic price fluctuations for geographically proximate and similar-use properties.

Mr. Tesh's valuation of the SFRR right-of-way is flawed in part because he applied a problematic methodology in an inconsistent manner. Mr. Tesh apparently determined H&BU by walking the right-of-way and cataloging existing uses. *See* CSXT Reply e-workpaper "Land Appraisal.pdf" at 15 and Appendix A. His approach is problematic for three specific reasons.

First, determining H&BU does not involve simply determining a parcel's existing use. Rather, it is an evaluative process where the appraiser analyzes various applicable market factors, including the general physical and economic conditions along the corridor. Documenting existing uses is a misapplication of H&BU because it ignores the necessary evaluation of various factors that may influence H&BU, such as the general physical and economic conditions present within a grouping of related uses along a corridor. Mr. Tesh's approach also leads to inaccuracies, especially when the physical uses of land have not kept pace with changes in the markets.

Second, Mr. Tesh's approach is misleading because, in addition to cataloging only existing uses, Mr. Tesh fails to account for frequent use changes within a larger area of generally related economic activity. For example, Mr. Tesh offers no explanation of how he evaluated the use of land that has both residential and retail units within one building. In other words, his micro-managed parcel-by-parcel approach of cataloging existing uses ignores the broader H&BU of economically related areas. Mr. Tesh's misapplication of H&BU together with his micro-managed "parcel-by-parcel" approach results in a large number of small sales with high-end prices.

Third, although Mr. Tesh identifies parcel-by-parcel uses and values, he fails to complete separate parcel appraisals. It would be impossible for Mr. Tesh to accurately discern value differences on a parcel-by-parcel basis without first fully considering specific market factors, physical characteristics, zoning, development potential, and completion of a H&BU analysis. Mr. Tesh did none of this. By omitting these analyses, Mr. Tesh's incomplete "parcel-by-parcel" analysis suffers from serious methodological flaws.

These three major methodological flaws, together with various other errors including Mr. Tesh's varied and unjustified pricing assumptions for adjacent parcels of land, his visually unsupported values, and his inconsistent pricing for vacant land, were all exhibited in Mr. Tesh's valuations of land in Rockville, Savannah, Atlanta, Chattanooga, and Richmond.

**i. Rockville, MD**

SECI's review of CSXT's valuation of the SFRR right of way in Rockville illustrates the results of the methodological flaws described above. CSXT's valuation utilized irrelevant comparables, misapplied H&BU, and misclassified certain parcels of land. The result of these factors is an inflated valuation that is not founded on sound appraisal principles. Although CSXT's claims that SECI's valuation of Rockville demonstrates SECI's "steps . . . to systematically undervalue urban areas" (CSXT Reply at III-F-16), SECI's analysis shows that Rockville illustrates CSXT's poor choices that lead to upward pricing pressures.

Of the 101 "residential" sales that Mr. Tesh evaluated in analyzing the Rockville portion of the right-of-way, 50 transactions were from Potomac, Maryland – *one of the most exclusive, highest priced residential areas in the region*. See Rebuttal e-workpaper "Millennium Report.pdf" at 7. Potomac is about seven miles away from the SFRR right-of-way and is starkly different from the lower-end residential properties adjacent to the track. The Potomac sales are completely irrelevant and highly misleading for purposes of the valuation of the Rockville portion of the right-of-way. Their inclusion in Mr. Tesh's valuation demonstrates his utilization of unwarranted higher-priced comparable sales.

Mr. Tesh's valuation of Rockville is further flawed by his misapplication of H&BU. Instead of engaging in an evaluative analysis of highest and best use, Mr. Tesh simply catalogued the existing uses along the right-of-way.

See CSXT e-workpaper “Land Appraisal.pdf” at 15 and A-14. As discussed above, cataloging a parcel’s existing use and calling this H&BU leads to inaccuracies.

Mr. Tesh also misclassified certain parcels of land in Rockville; for example, he classified an improved sale as a sale of vacant land. Needless to say, sales of improved land (land plus building) are priced higher than sales of vacant land (land only) and substituting improved land sales for vacant land sales results in unjustified upward pricing pressures. In addition, Mr. Tesh inappropriately lumped together disparate uses in arriving at his Rockville, MD valuation. For example, he included both \$5 and \$10 per square foot “residential” transactions with “residential” land purchased for condominium development. Mr. Tesh’s inappropriate comparables, inaccurate H&BU determinations, land misclassifications, and inappropriate generalizations for the Rockville portion of the right-of-way all served to inflate Mr. Tesh’s valuation of this section of the SFRR’s route.

**ii. Savannah, GA**

Mr. Tesh’s valuation of the Savannah right-of-way illustrates additional methodological flaws that resulted in upward pricing influences. Mr. Tesh’s valuation in Savannah yields wild price swings for geographically proximate, identical use land. These types of price fluctuations for comparable land are anomalies and are rarely, if ever, found in the market.

Mr. Smith found numerous examples of dramatic price swings throughout Mr. Tesh's analysis of Savannah. For example, in an area equal to about two city blocks in downtown Washington, D.C., Mr. Tesh's pricing jumps from \$0.20 psf (for retail use) and \$1.00 psf (for single family use) to \$5.50 psf (also for retail use). *See* Rebuttal e-workpaper "MillenniumM Report.pdf" at 10. Mr. Tesh's suggestion that vacant land prices for retail use within a two block span can vary by 2750 percent is incomprehensible and inconsistent with the concept of fair market value, which assumes knowledgeable buyers and sellers.<sup>6</sup>

Mr. Smith identified additional wild price swings for identical-use geographically proximate parcels of land in Mr. Tesh's analysis of industrial use land and single-family use land. Within a span of 1,100 linear feet, the price for industrial parcels of land drops from \$2.75 psf to \$0.90 psf and to \$0.05 psf. *See* Rebuttal e-workpaper "MillenniumM Report.pdf" at 11. At MP 0.88 (industrial use), the price is \$2.50 and at the next milepost (MP 1.02) the price drops to \$0.90 for the same use. *Id.* at 10-11. Similarly, adjacent single-family land and industrial land at MP 2.00 and MP 2.16 are identically priced at \$0.10 psf, however, the adjacent single-family parcel at MP 1.89 is priced at \$4.75 psf. *Id.* at 11-12.

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<sup>6</sup> Mr. Tesh demonstrates that he agrees that market value implies various assumptions, including the assumption that "Both parties are knowledgeable, well informed or well advised and acting in what they consider their own bet interest." *See* CSXT e-workpaper "Land Appraisal.pdf" at 10.

CSXT criticized SECI's valuation of Savannah, GA, arguing, in part, that SECI misclassified the area traversed by the right-of-way in Savannah by categorizing it as open space. CSXT Reply at III-F-13. In fact, SECI identified the predominant uses in this portion of the right-of-way as open space, residential, and industrial – largely the same uses that Mr. Tesh established. CSXT's accusations that SECI misclassified these portions of the right-of-way thus are inaccurate, and CSXT's price fluctuations demonstrate that Mr. Tesh's valuation methodology yields flawed results that do not comport with market realities.

**iii. Other Locations**

Further review of Mr. Tesh's analysis yields numerous inaccurate conclusions in his valuation of the Atlanta, GA, Chattanooga, TN, and Richmond, VA submarkets. Specifically, Mr. Tesh's valuation of these areas exhibited dramatic price swings for identical-use, proximately-located land. For example, in Mr. Tesh's analysis of the Atlanta portion of the right-of-way, Mr. Tesh valued parcels of single-family land at \$0.25 psf, adjacent parcels at \$1.50, and parcels located at a distance of 3,100 linear feet as high as \$4.00 psf. In other words, for a half acre lot, one homeowner is paying \$5,445, and another homeowner located only about 31 parcels away is paying \$87,120. *See* Rebuttal e-workpaper "MillenniumM Report.pdf" at 13.

These pricing anomalies were also present in Mr. Tesh's valuation of retail land in Atlanta. Specifically, Mr. Tesh valued retail land at \$6.00 psf at MP 91 and at MP 128. Only 1,900 feet away, he valued retail land at \$20.00psf –

333% higher than at MP 91. *See* Rebuttal e-workpaper “Millennium Report.pdf” at 9. These anomalies demonstrate that Mr. Tesh’s flawed methodology results in values that are inconsistent with the actual market.

Mr. Tesh’s analysis of Chattanooga demonstrated similar pricing inconsistencies to those in his analysis of Atlanta. In his analysis, Mr. Tesh fails to recognize the very low development density and large amount of open space in Chattanooga. Mr. Smith illustrates Mr. Tesh’s oversight by replicating CSXT’s right-of-way for Chattanooga, inserting Mr. Tesh’s prices, and overlaying a DeLorme aerial map. *See* Rebuttal e-workpaper “Millennium Report.pdf” at 16-17. As Mr. Smith’s maps show, Mr. Tesh opined ten difference prices (ranging from \$1.00 to \$3.50) for proximately located land (within one mile) that is more visually similar than dissimilar.

Mr. Tesh’s analysis of Richmond, Virginia also exhibited the same methodological problems. Specifically, Mr. Smith discovered that Mr. Tesh’s valuation sections showed dramatic price fluctuations within short distances. For example, in valuation section “A-RICH-02,” Mr. Tesh’s costs varied from \$5.00 to \$15.00 within a span of only 2.2 miles. *Id.* at 13.

Further review of Mr. Tesh’s valuation of Richmond unveiled additional pricing inconsistencies. Mr. Smith examined the County’s assessment records<sup>7</sup> for improved single family residences and found that assessed values for

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<sup>7</sup> There were few contemporaneous transactions to utilize for purposes of a comparison.



homes (land and building) ranged from around \$153,000 to \$373,000 in the subject area. In order to make an apples-to-apples comparison, Mr. Smith next reviewed Mr. Tesh's pricing for vacant land only, and estimated the typical lot size for single family properties that were adjacent to or within one block of the right-of-way. Mr. Smith then deducted Mr. Tesh's range of raw land values from the County's assessed values. With improved values at \$153,000 to \$373,000 and Mr. Tesh's land values at \$108,900 to \$326,700, only about \$45,000 remains as an allowance for the value of the improvements. Mr. Tesh's inflated prices for vacant land are further emphasized by the fact that typically, land accounts for about 25% to 33% of total improved land costs. As the comparison of Mr. Tesh's values with the County's assessed values demonstrate, Mr. Tesh's prices would result in land accounting for about 71% to 87% of total improved land costs. *Id.* at 21. Mr. Smith's analysis of Mr. Tesh's pricing for Richmond demonstrates, yet again, that Mr. Tesh's pricing conclusions simply do not make sense in the local market.

**b. CSXT's Criticisms of SECI's Valuation are Unfounded**

CSXT seeks to direct attention away from its own witness's methodological shortcomings by claiming that Mr. Smith did not properly determine highest and best use for the various parcels comprising the valuation segments. CSXT Reply at III-F-12. CSXT's criticisms here are unfounded as

Mr. Smith did, in fact, determine H&BU for the valuation segments.<sup>8</sup> Unlike Mr. Tesh's H&BU determinations, Mr. Smith adopted a broader, evaluative approach when analyzing H&BU. Specifically, Mr. Smith considered the general physical and economical characteristics of the land, reviewed extensive secondary data, and held discussions with local real estate personnel located in areas along the right-of-way in order to determine H&BU.

CSXT also erroneously claims that Mr. Smith's methodology is "anything but ATF [across-the-fence]." See CSXT Reply at III-F-10. In fact, Mr. Smith's valuation of the SFRR's right-of-way followed established methodologies and reached supported conclusions. Mr. Smith applied ATF valuation, which is a variation of the sales comparison approach. Pursuant to this approach, the corridor at issue is divided into segments with similar utility. The value of a typical parcel of adjacent land within or near a segment is applied to that portion of the corridor to arrive at that portion's market value. The portions' market values are then summed up to estimate the ATF value for the entire corridor. This is the approach that Mr. Smith applied, and it is consistent with established methodologies.

Additionally, CSXT argues that the size of Mr. Smith's valuation segments makes them inferior to Mr. Tesh's. CSXT Reply at III-F-5. CSXT fails

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<sup>8</sup> See Rebuttal e-workpaper "Rebuttal Land Costs.xls." (showing H&BU designations for right-of-way valuation segments) and Millennium Opening Report at 68, explaining its methodology for determining H&BU. Specifically, Mr. Smith noted that, in his analysis, he categorized the uses of land adjacent to the right-of-way into "residential, commercial, industrial, agriculture/ranching, mixed-use, and extreme/environmental buffer land." *Id.* at 86.

to cite anything in the appraisal literature that supports its claim that smaller valuation segments are superior to larger valuation segments – or that size is even a factor to be considered in determining valuation segments. Indeed, the appraisal literature is silent on any specific definitions of right-of-way segments. Contrary to CSXT’s suggestion, valuation segment determinations are the product of the appraiser’s experience, the nature of the assignment, and the characteristics of the comparables. *See* Rebuttal e-workpaper “MillenniumM Report.pdf” at 4. Any other assumptions about the physical dimensions of valuation segments are specious.

*Id.*

On Reply, CSXT claims that SECI’s January 1, 2009 valuation date – the date that the SFRR commences operations – was improper. *See* CSXT Reply at III-F-4. Without citing to any authority to support this claim, CSXT argues that SECI’s valuation date was inappropriate because the “land would need to be purchased before the hypothetical railroad could be constructed and begin operation.” *Id.* SECI is not aware of any Board precedent that requires land valuations to be dated prior to the SARR’s commencement-of-service date. Board precedent, however, does support SECI’s January 1, 2009 valuation date. *See Westmoreland Coal Sales Co. v. Denver & Rio Grande W. R.R.*, 5 I.C.C.2d 1067, 1091 (1988) (implying that land should be valued as of the commencement of operations of the SARR by noting that it is necessary to “adjust the land value from the date of [the] study to that time when the [SARR] would have begun operation.”). Furthermore, the general practice among parties to rate cases is to

value the land as of the date that the SARR will commence operations. *See, e.g., WFA/Basin* at 78-80 (relying largely on shipper's land valuation data which was based on an acquisition date of October 1, 2004, the date the SARR commenced operations.).

CSXT's application of a September 15, 2006 valuation date was improper and resulted in an inflated valuation. As Mr. Tesh acknowledges in his Land Appraisal at page 21, the downward pressure on prices in the market between 2006 and 2009 was "tremendous." As such, CSXT's utilization of a 2006 valuation date likely inflates CSXT's pricing.

CSXT also offers a hollow criticism of SECI's application of the 15% downward market adjustment. *See CSXT Reply* at III-F-8. In describing the market adjustment as "totally unsupported and unprecedented" CSXT demonstrates its expert's misunderstanding of the nature of land purchase, assemblage, development, and the interpretation of market sales.<sup>9</sup> In conducting appraisals utilizing a comparative sales analysis, such as Mr. Smith's appraisal of the SFRR's right-of-way, basic market adjustments are necessary to bring older sales into compliance with current transaction amounts. These adjustments suffice during periods of normal market price fluctuations. Additional market adjustments are necessary during unusual market conditions where market participants

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<sup>9</sup> *See CSXT Reply* at III-F-21. CSXT's criticism that the market adjustment is "unsupported" ignores the ample support that Mr. Smith provided for the adjustment in his Opening Report at 88-89.

anticipate additional dramatic price drops. Because most sales take between three and six months to close and are not indexed during this time, during quick-moving markets, (such as the late 2008 market) the market's perception of anticipated price changes must be factored into an evaluation of market value. Omitting this second consideration ignores the underlying assumptions of market value, which include knowledgeable buyers and sellers.

CSXT's focus on price decreases for real property in 2008 as a justification for omitting SECI's market adjustment factor is misplaced. CSXT Reply at III-F-8, 9. The issue is not whether the market declined in 2008. The issue is whether market participants anticipated a *further decline* as of the valuation date. In other words, the anticipated market decline as of January 1, 2009 was different from, and would have been in addition to, the anticipated market decline in the fall of 2008. Numerous publications demonstrate that late-2008 market participants anticipated additional, steep declines in prices. See Rebuttal e-workpaper "MillenniumM Report.pdf" at 27-28. As such, Mr. Smith's market adjustment is not only justified, but necessary to ascertain market values during these particular market conditions. CSXT's omission of this adjustment inflates an already high valuation and does not reflect market value.<sup>10</sup>

On Reply, CSXT highlights some discrepancies in the location of certain right-of-way segments, including a segment in Atlanta. CSXT Reply at

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<sup>10</sup> SECI notes that land acquisition values as of the SARR operations-start date are indexed back to the date of actual acquisition in the DCF model.

III-F-4. In limited areas, CSXT is correct about these differences, however, in most high-value areas, the locations of the right-of-way were identical. Furthermore, CSXT's claim that this was a "fundamental" error (CSXT Reply at III-F-7) is plainly false. A comparison of the values for Mr. Tesh's Atlanta right-of-way and Mr. Smith's Atlanta right-of-way shows that Mr. Smith's values are about 60 percent higher than Mr. Tesh's. See Rebuttal e-workpaper "MillenniumM Report.pdf," at 29. So while CSXT may be able to show that its valuation reflects a different route for a small part of the Atlanta portion of the right-of-way, its claim that this "serve[s] to substantially understate the right-of-way costs for the SFRR (CSXT Reply at III-F-8)" is nonsense.

CSXT also finds fault with Mr. Smith's classification of the portions of the right-of-way that traverse Richmond, VA and Charleston, SC as "Small Town" and the portions of the right-of-way that traverse Nashville, TN as "Small Town" and residential. See CSXT Reply at III-F-5. CSXT's misleading intimation that SECI undervalued the right-of-way in certain areas by describing those areas as less developed than they actually are is based on CSXT's misunderstanding of the "Small Town" designation and its "cherry picking" approach. Mr. Smith applied the "Small Town" classification to areas that exhibit an eclectic assemblage. This designation is intended to reflect the typical mixed-use pattern found in town areas or in developed areas adjacent to larger population centers. As such, it is an appropriate designation for the portions of the right-of-

way that traverse Richmond, Charleston, and Nashville – areas that in its Reply CSXT describes as “suburban.” *See* CSXT Reply at III-F-5.

CSXT also complains that Mr. Smith improperly classified portions of the Savannah, GA right-of-way as “Open” space. CSXT Reply at III-F-5. CSXT seems to be cherry-picking its facts with this criticism. Indeed, Mr. Smith did classify one segment of the right-of-way traversing Savannah as “Open.” However, he classified other portions of the Savannah right-of-way as industrial and small town. *Id.* SECI’s classifications of the portions of the right-of-way that traverse Richmond, Charleston, Nashville and Savannah are accurate, and CSXT’s criticisms and intimations are unfounded.

CSXT maintains that “Mr. Smith did not analyze the land in sufficient detail to accurately determine what it would cost to purchase any particular parcel.” CSXT Reply at III-F-11. This argument is nothing more than a reincarnation of CSXT’s earlier argument – that its approach is superior to SECI’s because Mr. Tesh utilized smaller valuation segments. In addition to SECI’s demonstration that such claims are specious, CSXT’s implication that Mr. Tesh’s parcel-by-parcel methodology is superior to Mr. Smith’s is simply inaccurate. In fact, several different methodologies with varying numbers of steps may be suitable for different appraisal projects.

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SECI’s application of the January 1, 2009 valuation date is consistent with Board practice; its valuation segments sizes are consistent with

appraisal principles; and its market adjustment factor that was necessary to arrive at an accurate market value figure in light of the real estate market's unusual state. Thus, SECI's continues to rely on its Opening land costs, as adjusted for the additional 0.60 route miles in West Virginia that have been added on Rebuttal.

**c. Easements**

SECI disagrees with CSXT's claim that easement prices for the SFRR should be increased by inflation, or that, alternatively, current land (fee simple) prices should be used in place of easement prices. CSXT's claims are incorrect for two reasons. First, easements themselves are typically acquired by payment of a one-time fee, and easement agreements do not provide for inflation of that fee. As the SFRR is stepping into CSXT's shoes with regard to these agreements it is entitled to the cost and benefit of these agreements, including the fee actually paid for the perpetual easement. *See* TMPA at 697. To do otherwise would be a barrier to entry.<sup>11</sup>

Second, an examination of possible ways to reflect the change in easement prices over time demonstrates that various land value indexes were inappropriate for measurement of the change in easement values. SECI reviewed CSXT's and its predecessor companies' actual experience with the easements at

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<sup>11</sup> Furthermore, the Board "does not require a stand-alone railroad to acquire greater title to property than the incumbent railroad." *TMPA* at 697. If the Board follows CSXT's suggestion and values the easement as a fee interest, it will have essentially required the SFRR to acquire a greater interest in land than CSXT's interest.



issue. Because these easements were acquired by CSXT between 1849 and 1972, SECI reviewed the actual amounts CSXT paid for easements over this 123-year period. The average price paid for the easements varied between \$0.00 and \$147.00 per acre. CSXT paid \$0.00 per acre several times during the 123 years and the high of \$147 per acre was paid in 1905.

SECI's Rebuttal e-workpaper "SFRR Easements avg price by 5 yr period.xls" shows the average price CSXT paid for easements in each successive five year period between 1845 and 1975. The prices paid clearly demonstrate that there is no specific trend in the price of the easements during this period. The average price of the easements in the first five year period was \$0.06 per acre and in the last five year period the price was \$0.35 per acre. The highest five year period was in 1850 to 1855 when the average price was \$4.68 per acre.

Furthermore, CSXT's claim, that MillenniumM (*i.e.* Mr. Smith) "apparently concurs" that easements for purposes of this exercise, should reflect "values comparable to fee" is a mischaracterization of Mr. Smith's position. In fact, Mr. Smith agrees that, for purposes of this assignment, valuing easements as equal to the fee interest is inappropriate.

For these reasons, SECI continues to rely on its Opening Evidence regarding the value of easements required for the SFRR's right-of-way.

## **2. Roadbed Preparation**

On Opening, SECI developed its roadbed preparation costs and quantities using the same basic techniques that have been repeatedly employed in

SAC proceedings before the Board. In other words, SECI utilized the ICC Engineering Reports, in large part, to develop various earthwork quantities, and then applied real-world project costs or Means Handbook unit costs as necessary. As is typical for these cases, on Reply CSXT has sought to significantly increase the roadbed preparation costs for the SARR – notwithstanding prior precedent, and essentially ignoring the evidence submitted by SECI. In this particular instance, CSXT has cast most of its ire (except where CSXT believes it is beneficial to its position) on the Trestle Hollow Project, a railroad construction project in Tennessee that was undertaken by SECI’s expert engineering witness, Harvey Crouch. SECI used this project as the basis for several unit costs, including common earthwork and clearing and grubbing.

CSXT has a litany of complaints regarding the Trestle Hollow Project, but at their core, CSXT’s complaints all come back to its central theme throughout its Part III-F evidence: “it should cost more.” As shown below, CSXT’s complaints are without merit.

The Trestle Hollow Project involved constructing a complicated, new alignment for the South Central Tennessee Railroad located in the vicinity of the SFRR’s tracks in Tennessee. This project was particularly challenging for several reasons. The purpose of the project was to bypass several large timber bridges that had been built at the turn of the 20th century. The alignment was designed to improve the vertical grade and reduce curvature as well. The original alignment skirted hilly terrain running west from Centerville, TN to Hohenwald,

TN. The new design was difficult due to the very hilly terrain and the number of ridges and valleys encountered along the proposed alignment. In addition, much of the land had not been accessed in decades. The resulting design included several very tall embankments, a number of deep cuts, all on an average 2.4 percent grade. Benching was employed to reduce the potential for slope degradation due to erosion. Clearing was difficult due to the hilly nature of the land and the size of the trees. The material excavated was, in large part, loose rock. An unusually large percentage of the excavated material had to be spoiled offsite (over 80% of excavated material), thereby adding to the complexity and costs.

Despite the Trestle Hollow Project's difficulties, the unit costs for clearing and grubbing and common earthwork were all substantially below the Means Handbook unit costs utilized by CSXT – although the \$1.65 per CY for excavation was about \$0.15 higher than the Tennessee DOT average. To support its much higher Means Handbook unit costs, CSXT attempts to discredit this project by suggesting that the project was an “obscure,” “small” and “atypical” shortline project – as if shortline projects are somehow substandard or not relevant to what the SFRR is building or is atypical of the unit costs SECI could expect if it bid out this project. Building a railroad – with complications such as those on the Trestle Hollow Project – is still building a railroad. The Trestle Hollow Project simply proves – as the Walker to Shawnee (Wyoming) project used in the

*WFA/Basin* case proved – that the SARR can expect to beat Means Handbook unit costs by using real-world project costs.

CSXT's specific criticisms are also without merit. First, CSXT suggests that the Trestle Hollow Project is near some of the SFRR route, but is far from other parts of the route. CSXT has not explained why the distance is particularly relevant. SECI has assumed that CSXT has made this argument as part of its general climate conditions arguments, which it also lists as a specific failing in using the Trestle Hollow Project. These climatic claims are without merit, as explained below.

CSXT next complains that the high concentration of cubic yards of excavation per mile involved in the Trestle Hollow Project would provide economies that are unavailable on the SFRR, where the average cubic yards per mile is lower. Indeed, CSXT suggests that because the Trestle Hollow Project used "Mass Excavation" as the grading line item, it must not be translatable to the common excavation used here. CSXT's arguments miss the point.

While it is true that the concentration of cubic yards was higher in the Trestle Hollow Project than the average on the SFRR, the undertaking was very complicated. Moving high volumes such as this requires careful coordination, particularly the proper staging of culvert and grading work, the ability to move large volumes of material in a short amount of time, and the ability to spoil, or waste, large volumes of excavated material offsite. In other words, it is exactly the type of project that CSXT's engineers would probably have

categorized as “adverse” and then tacked on untold costs using strategically selected Means Handbook cost items. The applicability to the SFRR is plain: This project is more difficult than what the SFRR would encounter, for the most part, on the lines that it is replicating. Indeed, the original rail lines being replicated by the SFRR are, for the most part, easy to construct, due to the ability to design and construct long sections of tangent track with very low grades and minimal curves. Thus, the application of the unit cost to easier territory is easily justified despite the lower volume per mile – especially when one considers that the total cubic yards of common earthwork for the SFRR project exceeds 91 *million* CY (*i.e.*, SECI can and will realize economies of scale). SECI also notes that the costs incurred for the Trestle Hollow Project are consistent with grading costs on larger highway projects throughout the states traversed by the SFRR (a table is included below).

The Means Handbook is one of many ways to project costs for a planned rail project. Crouch Engineering usually uses a combination of its historical tabulated prices and those developed by various state Departments of Transportation. For example, when Crouch Engineering developed its excavation unit cost estimate for the Trestle Hollow Project, it assumed that the cost per CY would be \$1.75 based in part on the Tennessee DOT average of \$1.50 per cubic yard in 2005. Crouch Engineering added \$0.25 per CY over the TDOT figure to account for the increased difficulty of the project. In the end, two contractors,

including the successful bidder, both submitted bids where the cost per CY for excavation was \$1.65.

A review of several published costs from various state Departments of Transportation show that unit prices significantly lower than those found in the Means Handbook are readily available.

<b>TABLE III-F-2</b> <b><u>EXAMPLES OF EARTHWORK UNIT COSTS FROM STATE DOTs</u></b> (millions)				
State	Bid Type	Quantity (CY)	Unit Cost	Year
South Carolina	N/A	131,105	\$3.35	2009
Virginia	Individual Bids	507,833	\$2.15	2008
Tennessee	Regional Averages	6,192,928	\$2.70	2009
West Virginia	Individual Bids	7,128,565	\$1.00	2008
Kentucky	Yearly Average	7,229,087	\$2.89	2008

As for CSXT's claim that the "Mass Excavation" line item that encompassed all grading for the Trestle Hollow Project cannot mean common earthwork as used here, CSXT is again incorrect. The "Mass Excavation" designation was not part of the bid documents that were issued for the Trestle Hollow Project. The project bid documents used "Unclassified Excavation," which means that any type of material encountered will all be paid on the same basis. See SECI Opening e-workpaper "Trestle Hollow Project Specs.doc," pages 142 and 150. In other words, the designation encompassed common earthwork, plus any other materials that might be encountered. "Mass Excavation" was the term the contractor used in responding to the bid – indeed, the workpaper that CSXT relied on is the contractor's bid sheet. Simply put, SECI's engineers were

conservative in applying the Trestle Hollow Project unit cost only to common earthwork – they could have easily applied it to the loose rock category as well. Indeed, the geotechnical reports for the Trestle Hollow Project show that various chert rock classifications were found in the borings, and ultimately were excavated without any increase in the excavation unit cost.

CSXT also suggests that the Trestle Hollow Project was somehow easier and more efficient due to the right-of-way width, which is larger than the SFRR's. The right-of-way was wider here because steep hills necessitated taller fills and deeper cuts, and the alignment required that chunks of hillside be moved and large valleys filled. According to Mr. Crouch, there were areas where turning equipment around was difficult, but the project was not hindered by this limitation.

Finally, CSXT argues that the Trestle Hollow Project falls within the Interior Low Plateau region, but the SFRR has to traverse other areas which CSXT argues are materially different. Once again, CSXT misses the mark.

CSXT's geographic regions arguments are based in large part on its Reply e-workpaper "Seminole Freight RR Survey.pdf." While this workpaper provides general descriptions of the areas traversed by the SFRR, CSXT has not demonstrated any specific instances where these general classifications would materially alter the roadbed preparation work, and it has not demonstrated why the Trestle Hollow Project is materially different in terms of the type of work that would need to be performed by the SFRR's contractors.

Despite the contempt CSXT exhibits for the Trestle Hollow Project, in the very same paragraph where CSXT's engineers conclude that they could not use the Trestle Hollow Project unit costs because the project is *so* different than the rest of the SFRR, CSXT does an about face and *relies* on the Trestle Hollow Project to argue that the Board should utilize 22 CY haulers, where the Means Handbook is used to develop earthwork unit costs, instead of the 42 CY haulers that the Board has repeatedly approved. CSXT's duplicity with respect to the Trestle Hollow Project suggests that CSXT's attempt to discredit the Trestle Hollow Project was driven solely by its desire to increase the unit costs for common earthwork.

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CSXT devotes a portion of its roadbed preparation introduction to a discussion of the various territories it believes SECI should have characterized as "adverse" due to either mountainous or "wet" climactic conditions. CSXT's extension of the adverse territory beyond what SECI utilized on Opening is inappropriate and unsupported.

On Opening, SECI designated the portion of the SFRR's East Division west of Point of Rocks, MD as mountainous. For this territory, SECI increased its earthwork unit costs in a manner similar to that utilized in the prior Eastern rate cases (*i.e.*, *Duke/CSXT* and *Duke/NS*). SECI added this mountainous designation, and used higher unit costs for mountainous areas in its Opening Evidence, to be conservative and consistent with the Eastern cases even though, as



explained above, its common earthwork unit cost was already based on a project with more difficult terrain than that found on most of the SFRR route. CSXT accepted this designation, but then added the 250-mile portion of the SFRR route from Atlanta to Nashville to the “mountainous” designation. CSXT’s additional designation is unwarranted.

The area between Atlanta and Nashville is characterized by rolling hills, not continuous and difficult mountain terrain as seen west of Point of Rocks. Moreover, the CSXT/SFRR route follows a fairly easy right-of-way through this territory; only occasionally does it encounter a hill without a ready passage. In those cases, a tunnel may have been built (*e.g.*, the tunnel near Cowan, TN). CSXT’s own maps demonstrate the stark difference between the areas west of Point of Rocks, where mountains are crossed again and again and the railroad winds around mountains in numerous, versus the areas between Nashville and Atlanta, where the territory largely follows the valleys until a crossing is required – and even then the “mountainous” terrain is limited to a small area and the elevation changes are not as significant. *See CSXT Reply e-workpaper “Seminole Freight RR Suveys.pdf.”*

Two examples are shown below to illustrate this point. The first is a terrain map taken from Google Maps, with the approximate SFRR route drawn on it. While there are a few areas that might be classified as mountainous, in general the railroad is not traversing an “adverse” route, let alone an adverse route extending 250 miles from Nashville to Atlanta.



The second terrain map shows the area west of Point of Rocks, MD extending to Cumberland, MD. As this map demonstrates, there is no comparison between the two regions in terms of the extent of the mountainous areas to be

traversed. As such, SECI continues to use only the territory west of Point of Rocks as adverse-mountainous.



CSXT also argues that the SFRR would encounter adverse conditions over another 784.19 route miles, including North Carolina, South Carolina and parts of Georgia and Florida. CSXT claims that “wet” conditions in this “Coastal Plain Region” would hinder construction. CSXT’s new adverse – wet category is not supported and should be rejected.

First, the general descriptions that CSXT relies on for its new adverse “Coastal Plain” territory are *very* general indeed. For example, the Coastal Plain Region is described, in one subregion, as having:

a moderate density of small to medium size perennial streams and a low density of associated rivers, most with moderate volume of water at very low velocity. Water table is high in many areas, resulting in poor natural drainage and abundance of wetlands. Poorly

defined drainage pattern has developed on this relatively young, weakly dissected plain. There are numerous palustrine systems with seasonally high water levels, especially in pocosin areas. Carolina Bays form natural lakes in some areas. Major rivers include the St. John, Altamaha, Santee, Pee Dee, and Neuse.<sup>12</sup>

Based on this general description, repeated for the most part in the other subregions, CSXT concludes that the SFRR will have to incur significant extra costs to dry soils when using borrow materials. CSXT also maintains that the SFRR will otherwise have increased earthwork unit costs to account for adverse conditions such as subsidence over the entire 784 miles because water tables *may* be high and wetlands *may* be present in a particular area. Yet CSXT did not provide a single example of a location where these conditions actually exist or otherwise demonstrate the specific impact this would have on construction.

The only example that CSXT did provide is that the ICC Engineering Reports indicate that the total earthwork quantities in certain valuation sections were adjusted to account for subsidence, which can be an indication of poor soil conditions, but not necessarily “wet” conditions. However, the earthwork quantities identified as subsidence on the ICC Engineering Reports are already included in the valuation section earthwork quantities that both SECI and CSXT relied on. Moreover, a review of the excavation unit costs shown on

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<sup>12</sup> See CSXT Reply e-workpaper “Seminole Freight RR Surveys.pdf.”

the ICC Engineering Reports reveals that the excavation unit costs for the valuation sections covering CSXT's "adverse – wet" territory are no higher than any of the other valuation sections on the SFRR. This indicates that either the so-called problem was not encountered, or no special work was necessary. *See* Rebuttal e-workpaper "SFRR Grading Rebuttal.xls," tab "ICC Eng Rep Unit Costs." Furthermore, both SECI and CSXT have included all drainage structures and Protection of Roadway items identified on the ICC Engineering Reports for the valuation sections encompassing this 784.19 miles.

SECI's engineers also point out that CSXT's engineers did not include any data that shows that the water tables near the lines being replicated were high enough to interfere with the SFRR's construction. Moreover, CSXT ignores the fact that high water tables or wetland conditions were probably taken into account when the railroad route was initially established. After all, when these lines were built in the 1800s, the technological limitations of the day would have favored routings that avoided locations where water would have hindered construction; obviously water cannot be entirely avoided since there are a number of bridges in the territory and certain ports are also served, but that is true of the entire SFRR route.

Another problem with CSXT's classification is that the states where CSXT applied the classification, specifically, North Carolina, South Carolina, Georgia and Florida, were experiencing an unprecedented drought in 2007 and 2008 (the period the SFRR is being constructed). For example, during 2007,

USA Today had the following headlines: “Relentless N. Carolina drought could be devastating in ‘08”; “Southeast drought hits crisis point”; and “Southeast withers from 16 months of drought woes.” *See* Rebuttal e-workpaper “Southeast Drought Articles.pdf.” In its Rebuttal e-workpapers, SECI has also shown state-by-state drought maps for different periods during 2007. *See* Rebuttal e-workpapers “Drought Maps.pdf.” Thus, it is unlikely that high water tables would be an adverse factor in constructing the SFRR. Based on the foregoing, SECI has not accepted the “wet” adverse classification or the higher earthwork unit costs that CSXT proposed for this classification.

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CSXT has also included roadbed preparation costs for the NS-owned MGA lines that the SFRR operates over using trackage rights. As explained in Part III-B-1, the SFRR is not building these lines and does not have to pay any part of their reproduction or acquisition cost. As such, SECI has excluded roadbed preparation costs for these line segments.

Rebuttal Table III-F-3 below summarizes the differences in the parties’ roadbed preparation costs.

**REBUTTAL TABLE III-F-3**  
**COMPARISON OF ROADBED PREPARATION COSTS**

<u>Item</u> (1)	<u>SECI</u> <u>Opening 1/</u> (2)	<u>CSXT Total</u> <u>(Excl. MGA) 2/</u> (4)	<u>SECI</u> <u>Rebuttal 3/</u> (6)
1. Earthwork			
a. Common	\$172,207,747	\$552,578,702	\$172,542,442
b. Loose Rock	\$133,298,595	\$149,740,609	\$133,426,774
c. Solid Rock	\$333,935,060	\$375,113,076	\$334,904,049
d. Borrow	<u>\$265,609,605</u>	<u>\$312,268,535</u>	<u>\$268,457,389</u>
e. Total	\$905,051,007	\$1,389,700,922	\$909,330,654
2. Clearing & Grubbing	\$38,545,779	\$53,929,376	\$39,164,452
3. Drainage			
a. Lateral Drainage	\$6,633,969	\$7,066,948	\$6,670,555
4. Culverts	\$40,122,490	\$146,023,766	\$41,732,727
5. Retaining Walls	\$63,787,212	\$201,221,216	\$63,795,144
6. Rip Rap	\$11,674,118	\$11,886,182	\$11,674,696
7. Road Surfacing	\$3,215,280	\$3,215,280	\$3,215,289
8. Relocation of Utilities	\$599,737	\$599,737	\$599,737
9. Topsoil Placement / Seeding	\$804,283	\$804,283	\$804,283
10. Land for waste quantities	\$802,336	\$961,899	\$963,587
11. Environmental Compliance	\$722,905	\$722,905	\$722,905
12. Stripping	\$0	\$10,963,213	\$0
13. Undercutting - Subsidence	\$0	\$16,993,442	\$0
14. Fine Grading	\$0	\$14,291,425	\$0
15. Const. Access Roads	<u>\$0</u>	<u>\$1,043,092</u>	<u>\$0</u>
16. Total	\$1,071,959,116	\$1,859,423,686	\$1,078,674,029

1/ SECI Opening e-workpaper "SFRR Grading.xls" and "Culvert Costs.xls."

2/ CSXT Reply e-workpaper "CSX Modified SFRR Grading.xls" and "Modified Culvert Costs.xlsx."

3/ SECI Rebuttal e-workpaper "SFRR Grading Rebuttal.xls" and "Rebuttal Culvert Costs.xls."

**a. Clearing and Grubbing**

**i. Quantities of Clearing and Grubbing**

CSXT accepted SECI's methodology for developing clearing and grubbing quantities based on the ICC Engineering Reports. The parties do not differ on the quantities because CSXT used SECI's Opening route and track miles in its clearing and grubbing cost calculations. On Rebuttal, SECI has increased its Opening route and track miles slightly, and, therefore SECI's Rebuttal clearing and grubbing quantities show a minor increase. *See* Rebuttal e-workpaper "SFRR Grading Rebuttal.xls," tab "IIIF\_3 Othr EW."

**ii. Clearing and Grubbing Unit Costs**

On Opening, SECI utilized a unit cost of \$2,000 per acre, indexed to \$2,154.66 (January 1, 2009 cost levels), to both clear and grub based on the Trestle Hollow Project cost. SECI conservatively applied \$2,154.66 per acre for clearing and grubbing to all of the SFRR acres of clearing despite the fact that 70 percent of the SFRR's acres would only require clearing, and not grubbing, which can be done with a brush rake at less than \$250 per acre – a point that CSXT admits (CSXT Reply at III-F-32). Nevertheless, CSXT argues against SECI's use of the Trestle Hollow Project unit cost by suggesting that SECI has not shown a link between the Trestle Hollow Project clearing and grubbing costs and what has to be cleared and grubbed on the SFRR.<sup>13</sup> As noted above, the Trestle Hollow

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<sup>13</sup> CSXT also argues that SECI has not shown whether the 30 acres cleared reflects the total project acreage or just the part that had to be cleared. If CSXT is



Project is a feasible and valid project to use in determining costs for the SFRR.

The Trestle Hollow Project included some tricky clearing and grubbing due to the terrain involved, and application of the Trestle Hollow Project clearing and grubbing unit cost to the entire SFRR probably overstates the cost versus the overall clearing requirements for the SFRR's right-of-way. In particular, the trees on the Trestle Hollow Project were located in part on the right-of-way, but trees on the hillsides were also removed. As the aerial photos included on Opening show, the trees were located in undisturbed stands. *See* SECI Opening e-workpaper . "Aerial Photos #1.pdf." Many of these trees had never been clear cut (or not cut in many years) due to their location. In other words, CSXT's complaint is a red herring: The Trestle Hollow Project clearing and grubbing cost per acre is more than adequate for the SFRR.

While SECI continues to use its Opening clearing and grubbing unit cost, it does note that CSXT's alternative clearing and grubbing costs are overstated. In particular, CSXT argued that 20 percent of the right-of-way should be cleared and grubbed using Means Handbook unit costs for trees 12-24 inches in diameter. CSXT's percentage has no empirical support. CSXT's only alleged support is the field observations, but the field notes do not mention trees nor is there an inventory of the territory to support the 20 percent assumption. *See* CSXT Reply e-workpaper folder "Field\_Trip\_Photos."

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attempting to suggest that there were other unknown or higher unit costs, SECI's engineers note that no other clearing was needed.

**iii. Other**

**(a) Stripping**

CSXT adds an additional cost for stripping on the basis that such activity is required, and that the Trestle Hollow Project, which included stripping (where necessary) in the earthwork costs, is not applicable. SECI has already addressed the applicability of the Trestle Hollow Project, and on that basis it continues to exclude any additional costs for stripping.

However, even assuming *arguendo* that Means Handbook costs should be used, CSXT has ignored Board precedent with regard to stripping. As SECI explained on Opening, in *PSCo/Xcel* the Board rejected additional stripping costs because “the top 6 inches of soil would be removed during excavation and because topsoil removal is included in waste costs, there would appear to be no need for a separate charge for stripping. To the contrary, including such an additional cost would result in a double count.” *Id.*, at 671; *see also AEP Texas* at 79. Thus, CSXT’s additional costs are unwarranted.

**(b) Undercutting**

On Opening, SECI’s engineers did not include a separate cost for undercutting, noting that the Board has repeatedly rejected additional costs for this item. *See WFA/Basin* at 83; *AEP Texas* at 79; *Duke/NS* at 176; *CP&L* at 313; *Duke/CSXT* at 480. In addition, the excavation unit costs being utilized by SECI include excavation of unsuitable materials when necessary at no additional cost. *See* Opening e-workpaper “Trestle Hollow Project Specs.doc” at 156 (“No

additional payment will be made for undercutting. Work related to undercut and replacement is considered a standard grading practice to achieve a suitable subgrade and shall be considered as incidental to excavation and fill placement. Direct payment for work related to undercut and replacement will not be made.”)

On Reply, CSXT skirts the Board precedent and the Trestle Hollow Project costs and argues that a new cost item, “secondary subsidence,” must be added. CSXT Reply at III-F-34. CSXT’s rationale for the new cost item is that the ICC Engineering Reports for certain valuation sections included adjustments to the earthwork quantities to account for subsidence. However, CSXT recognizes that those quantities are already captured in the ICC Engineering Reports, and, therefore, in the earthwork quantities used by both parties. Nevertheless, CSXT argues that those quantities only account for “initial subsidence,” which it claims occurs very rapidly. Thus, CSXT argues that the SFRR must add additional costs to account for “secondary subsidence,” which CSXT claims will occur over time where there is poor soil, and which it apparently believes is not captured by the ICC Engineering Reports. CSXT estimates that 85 percent of the original subsidence quantities would have to be excavated at a cost of \$17 million.

CSXT’s additional costs should be rejected for several reasons. First, CSXT provides no evidence that ICC Engineering Report subsidence quantities are for “initial subsidence,” as the quantities are only identified as “subsidence” on the documents. Most of the lines being replicated by the SFRR were built decades before the ICC valuations were performed during the 1910s

and 1920s, so the subsidence quantities on the ICC Engineering Reports would likely capture all subsidence since the original construction. CSXT also presents no evidence that the lines being replicated encountered any secondary subsidence. CSXT's subsidence calculations suffer from the same defect as several other CSXT calculations in this proceeding – they are not based on any specific examples but rather on unsupported assumptions.

CSXT suggests that secondary subsidence will take longer than initial subsidence (assuming it would occur at all). However, CSXT has not suggested exactly what time period is involved. Therefore, it has not shown that the SFRR would incur this cost during the 10-year DCF Model period. Moreover, CSXT ignores the modern-day construction measures that help prevent subsidence. In particular, proper laying and compaction of subballast, such as a crusher run sub-ballast roadbed cap, can reduce the water that settles in the roadbed thereby improving subsurface conditions. In light of the above, SECI has not included any additional costs for this item.

**b. Earthwork**

**i. Earthwork Quantities**

**(a) SFRR Line Segments**

CSXT accepts SECI's methodology for the development of earthwork quantities. CSXT identified a few errors in the quantities taken from the ICC Engineering Reports, and SECI has accepted these corrections on Rebuttal. As discussed in Part III-B, the parties agree, except in a few minor

instances, on the route and track miles for the SFRR. However, SECI notes that CSXT utilized SECI's Opening route and track miles in its Reply calculations. The major difference in quantities between the parties is driven by CSXT's inclusion of the NS-owned MGA lines, which the SFRR is not required to build.

**(b) SFRR Yards**

CSXT accepted SECI's methodology for the development of yard earthwork quantities. However, CSXT greatly expanded the SFRR's total number of yards and increased yard tracks at locations where SECI provided yards. This should have resulted in more grading costs, but CSXT did not include the expanded yards in its grading calculations. Regardless, as explained in Parts III-B and III-C, SECI is not building most of the additional yard facilities proposed by CSXT.

On Rebuttal, SECI has made some minor modifications to overall yard track quantities, including the addition of several interchange yards and "Transflo" tracks. These new quantities are detailed in Rebuttal e-workpaper "SFRR Grading Rebuttal.xls," tab "IIIF-8 Yards."

**(c) Total Earthwork Quantities**

As discussed above, and in Section III-B, SECI has added 0.6 route miles, five new interchange locations, five intermodal yards and track at ten Transflo facilities. This results in a slight increase over Opening in the earthwork quantities for the SFRR. Also, as noted above, CSXT used SECI's Opening track and yard miles in its Reply calculations. Rebuttal Table III-F-4 below compares

the parties' earthwork quantities (exclusive of the MGA lines that the SFRR does not need to build).

<b>REBUTTAL TABLE III-F-4</b> <b>SFRR EARTHWORK QUANTITIES</b> <b><u>BY TYPE OF MATERIAL MOVED</u></b> (Cubic yards in thousands)				
<u>Type of Earth Moved</u>	SECI <u>Opening 1/</u>	CSXT <u>Reply 2/</u>	SECI <u>Rebuttal 3/</u>	CSXT Reply Over / (Under) SECI <u>Rebuttal 4/</u>
(1)	(2)	(3)	(4)	(5)
1. Common	91,950	91,968	92,132	(164)
2. Loose Rock	13,104	13,105	13,116	(11)
3. Solid Rock	24,389	24,260	24,301	(41)
4. Borrow (incl. yards)	<u>16,907</u>	<u>16,907</u>	<u>17,088</u>	<u>(181)</u>
5. Total	146,350	146,240	146,637	(397)

1/ SECI Opening Exhibit III-F-9.  
 2/ CSXT Reply e-workpaper "CSX Modified SFRR Grading.xls," tab "IIIF\_9 EW Cost" (excludes MGA lines).  
 3/ SECI Rebuttal e-workpaper "SFRR Grading Rebuttal.xls," tab "IIIF\_9 EW Cost."

## ii. Earthwork Unit Costs

SECI has already addressed the use of the Trestle Hollow Project in the introduction to the earthwork section. Thus, it will simply note here that CSXT's introduction to earthwork unit costs (CSXT Reply at III-F-36-37) repeats its arguments about the Trestle Hollow Project, which are not valid for the reasons explained above. Likewise, CSXT again does an about face and relies on the Trestle Hollow Project to argue for the use of a 22 CY truck to haul materials rather than the 42 CY truck that SECI utilized for loose rock and solid rock unit

costs, where it applied Means Handbook unit costs. Putting aside that CSXT is trying to have its cake and eat it too, the use of a 42 CY truck has repeatedly been accepted by the Board – and even accepted by some defendant railroads such as BNSF. *See, e.g., Otter Tail* at D-11-12; *PSCO/Xcel* at 677; *AEP Texas* at 81 (BNSF accepted the use of 42 CY hauler). Moreover, CSXT had no response to SECI's Opening evidence demonstrating that such trucks can be used for railroad work, and can even turn around in the SFRR right-of-way. *See* SECI Opening at III-F-34 and Opening e-workpaper "42 CY Truck.pdf." Instead, CSXT argues only that SECI has not shown that such trucks are actually used (without suggesting their use is not feasible). Regardless, such trucks are used in railroad construction projects. Indeed, Mr. Crouch notes that he has personally seen trucks of this size on an NS project that Crouch Engineering worked on near Hazle Township, PA. As such, SECI continues to use the 42 CY hauler where it was specified on Opening.

CSXT also made an adjustment to the Means Handbook-based earthwork units costs that has never before been presented in a SAC proceeding, despite the use of Means Handbook earthwork unit costs in some capacity in every proceeding. CSXT modified the Means Handbook earthwork unit costs to account for the different volumes of material that must be handled depending on whether the material is still in place (bank-measure volume), loose or compacted. CSXT refers to this in its narrative as its shrink/swell adjustment. SECI disagrees that

this adjustment is necessary, and it also notes that, even if such an adjustment was warranted, CSXT overstated the adjustment in several instances.

First, SECI notes that CSXT provided almost no explanation of its adjustment in its Reply Narrative. Only after sifting through CSXT's workpapers did SECI's engineers determine the extent of the impact and the justifications that CSXT used for its adjustment. In summary, CSXT's position is predicated on the assumption that the ICC Engineering Reports show bank cubic yards ("BCY") while the Means Handbook uses loose cubic yards ("LCY") for hauling. In fact, the cubic yard quantities shown on the ICC Engineering Reports are not labeled in any way. Since loose quantities may swell when compared to bank quantities, CSXT concludes that an additive must be used to account for the additional trips that the haul trucks must make to move the greater volume of loose quantities. CSXT suggests the mark-up would be 20 percent for common excavation, 40 percent for loose rock, and 60 percent for solid rock.

Contractors are paid on bank quantities – a point even CSXT acknowledges. CSXT Reply at III-F-37. To be sure, there may be variations in the bank volume versus the loose volume, but CSXT's additional costs are unwarranted. Simply put, SECI has already shown that actual project costs for a large scale project such as the SFRR would be lower than the Means Handbook costs. Indeed, the Trestle Hollow Project cost supports substantially lower earthwork costs for common excavation, as well as loose rock excavation, than cost based on Means Handbook unit costs. To take already higher Means



Handbook costs, and increase them to account for the estimated difference in bank and loose quantities, simply adds more costs where none would be warranted if the SFRR project were actually bid out. Indeed, the Trestle Hollow Project unit cost already reflects any difference in quantities, to the extent a difference exists. As such, SECI urges the Board to reject this additive.

While SECI disagrees with CSXT's adjustment, it also determined that CSXT's swell/shrink adjustment is overstated. The sources that CSXT relies upon for shrink/swell do not have a loose rock category. Nevertheless, CSXT adds 40 percent for this category versus 20 percent for common earthwork. In today's construction world there is no loose rock category of costs; it is either common (which encompasses loose rock) or solid rock. In addition, CSXT's solid rock additive of 60 percent is too high. CSXT's sources are split, as two show a 60 percent additive and one shows a 50 percent additive. The Means Heavy Construction Handbook shows a 50 percent additive for blasted rock. *See* SECI Rebuttal e-workpaper "Means Heavy Construction Handbook.pdf." CSXT has not supported the higher figure. Should the Board accept CSXT's adjustment despite all its shortcomings, the adjustment should be no higher than 20 percent for common and loose rock and 50 percent for solid rock.

**(a) Common Earthwork**

As discussed above, SECI used the Trestle Hollow Project common earthwork unit cost to develop its Opening common earthwork costs, which SECI has shown to be a valid and feasible unit cost to apply to the SFRR's construction.

In this section, CSXT repeats its prior arguments against the project, which SECI has explained are without merit. CSXT also repeats its arguments in favor of additional adverse territory, which SECI also has already debunked.

CSXT's common earthwork evidence addresses one new issue. On Opening, SECI included a higher common earthwork unit cost for the portion of the SFRR west of Point of Rocks, MD, which SECI classified as "adverse" mountainous to be conservative and consistent with the prior Eastern rate cases. CSXT agrees with the designation of this territory as adverse mountainous, but disagrees with the methodology that SECI used to develop the higher common earthwork unit cost for this adverse territory.

As explained on Opening (at page III-F-33), SECI developed the adverse territory common earthwork unit cost as follows. First, SECI calculated the ratio between the Means Handbook-based common earthwork unit cost and the Means Handbook-based adverse common earthwork unit cost, which was developed using the adverse equipment package from the Eastern cases. SECI then applied this ratio to the Trestle Hollow Project common earthwork cost to obtain the increased common earthwork cost for adverse mountainous territory. CSXT complains that this is a questionable methodology because it is "ad hoc." CSXT's complaint is without merit; ratios of this kind are commonly used. For example, the parties use location factors to adjust Means Handbook unit costs; this is just one example of how unit costs are adjusted using ratios. Moreover, SECI's methodology recognizes the relationship between adverse and normal conditions

established in prior cases. As such, SECI continues to use its Opening common earthwork unit cost for adverse mountainous territory.

**(b) Loose Rock Excavation**

The parties agree on the unit costs for loose rock excavation (including the applicability of adverse loose rock unit costs) with three exceptions: CSXT's shrink/swell additive; the use of a 42 CY truck; and CSXT's expansion of the SFRR's adverse territory. As explained above, SECI does not agree that a shrink/swell additive is applicable, and in any event, CSXT's loose rock shrink/swell additive should be a maximum of 20 percent and not 40 percent for the reasons given above. Likewise, CSXT's 42 CY truck argument, as well as its proposed expansion of the adverse territory, have previously been rebutted. SECI continues to use its Opening loose rock unit costs.

**(c) Solid Rock Excavation**

The parties agree on the unit costs for solid rock excavation, a mixture of 50 percent solid rock costs and 50 percent loose rock costs (including the applicability of adverse loose rock unit costs), with three exceptions: CSXT's shrink/swell additive; the use of a 42 CY truck; and CSXT's expansion of the adverse territory. SECI has already responded to CSXT's erroneous position with respect to all three of these items, and therefore continues to use its Opening solid rock unit costs.

**(d) Embankment/Borrow**

The parties agree on the unit cost for borrow with two exceptions: CSXT's shrink/swell additive and CSXT's mark-up of the borrow unit cost to account for drying borrow in so-called "adverse – wet" conditions. As explained above, SECI does not agree that the shrink/swell additive is applicable, and CSXT's new "adverse – wet" category is both unsupported and inconsistent with conditions present during the construction of the SFRR. Furthermore, CSXT did not present any evidence of a single instance along the SFRR route where the drying of borrow was necessary during the original track construction (or, for that matter, in connection with any subsequent construction such as the addition of a second main track or a spur to serve a new industry). Finally, CSXT's mark-up ratio of 20 percent for drying borrow is arbitrary and completely unsupported. As such, SECI continues to use its Opening borrow unit cost.

**(e) Fine Grading**

On Opening, SECI's Trestle Hollow Project earthwork unit cost already accounted for fine grading at no additional cost. CSXT argues that the Means Handbook unit costs it relies on do not include fine grading activities, and CSXT has added these costs. CSXT's additional costs are without merit.

First, SECI notes that the Trestle Hollow Project unit cost already accounts for this activity, and since that unit cost is valid and feasible, CSXT's additive is unnecessary. Second, Mr. Crouch notes that in his experience a motor grader is often not needed to achieve a finished grade. Finally, SECI notes that the

Board has rejected this additive in the past. *See AEP Texas* at 82-83; *Duke/NS* at 176; *Duke/CSXT* at 480; *CP&L* at 313-314. As such, SECI has not added any additional costs for fine grading.

**(f) Land for Waste Excavation**

On Opening, SECI included land to place wasted excavation, and it assumed a 30 percent waste ratio. CSXT accepts SECI's approach with one modification, which it did not discuss in its Narrative – CSXT increased the total waste amount by 20 percent to account for its shrink/swell additive. As SECI has previously explained, the shrink/swell additive is unnecessary from a grading cost perspective since the contractor is paid on the embankment quantities. However, the land needed to hold the waste will need to account for the additional volume. As such, SECI has accepted the additive for this purpose only.

**c. Drainage**

**i. Lateral Drainage**

The parties agree on the methodology for developing lateral drainage quantities. CSXT's Reply quantities (exclusive of the NS-owned MGA lines) are identical to SECI's Opening quantities. SECI's Rebuttal quantities differ slightly due to a minor adjustment in the route miles.

The parties disagree on elements of the unit costs for lateral drainage. In particular, CSXT extended the length of haul for crushed stone from two miles to ten miles, without any explanation other than suggesting that two

miles is unreasonable. CSXT's additional miles are unsupported and should be rejected by the Board.

CSXT also added a cost to cut a trench to place the drainage pipe. CSXT's addition is without merit. As the Board has explained in previous SAC cases, any necessary trenching can be done at the same time that the line is being excavated, and, therefore, there is no need for additional costs for this activity. *See Duke/NS* at 176; *Duke/CSXT* at 480-481; *CP&L* at 314. *See also AEP Texas* and *WFA/Basin*, where there was no dispute over installation costs using the same methodology that SECI is using here.

The lateral drainage unit cost that SECI employed on Opening has been repeatedly accepted by the Board and other railroads. *See Duke/NS* at 176; *Duke/CSXT* at 480-481; *CP&L* at 314; *WFA/Basin* at 88; *AEP Texas* at 83 (railroad accepted the same unit cost). SECI therefore continues to use the same unit cost as on Opening with one correction to its compaction unit cost, which was noted by CSXT in its Reply e-workpaper "CSXT Modified SFRR Grading.xls."

**ii. Yard Drainage**

On Opening, SECI's engineers accounted for drainage by properly sloping the yard track roadbed so that water runs off through the ballast into ditches. CSXT's suggestion that SECI intended the ballast to act like check dam thus is incorrect. Regardless, CSXT proposed all manner of yard drainage facilities, including 48 inch corrugated metal pipes to handle storm water. Simply put, CSXT's added drainage is not needed.

When setting up yard tracks, the roadbed is sloped to run the surface drainage to ditch lines, and, as can be seen in actual CSXT yards, the ballast aids in running the storm water toward the roadbed shoulders. *See* Rebuttal e-workpaper “Yard Drainage.pdf.” In any event, CSXT does not use the drainage it proposes in its own yards. *Id.* In addition, NS actually prefers that catch basins and similar drainage facilities not be included because they tend to interfere with ballast regulation and they are easily clogged with ballast and fines. Indeed, when Crouch Engineering worked on a yard project for NS in Sheffield, AL it excluded any drainage for the yard tracks. As such, SECI has not added additional drainage on Rebuttal.

**d. Culverts**

On Opening, SECI utilized data provided by CSXT in discovery to develop culvert quantities. However, as SECI explained, CSXT’s culvert data was incomplete: it covered only 729.21 miles of the 2,092.40 miles of CSXT lines being replicated. Therefore, SECI utilized the CSXT culvert inventory to develop quantities per mile of various culvert sizes to fill-in the missing pieces. In addition, SECI converted many bridges shorter than 20 feet to culverts. CSXT agrees with SECI’s approach in general, but in the details CSXT has diverged significantly from SECI’s Opening approach particularly with respect to unit costs.

**i. Culvert Unit Costs**

On Opening, SECI utilized unit costs for corrugated metal pipe (“cmp”) derived from a bid from Contech, a vendor that supplies cmp to many railroads. The crushed stone bedding unit cost, including placement was derived from the Trestle Hollow Project. The excavation and backfill pricing was derived from Means Handbook unit costs. *See* Opening e-workpaper “Culvert Costs.xls.”

Consistent with CSXT’s approach elsewhere, it dismisses any of SECI’s real-world unit costs, such as the Contech and Trestle Hollow Project costs, in favor of higher costs from the Means Handbook. For Trestle Hollow it repeats the same argument made elsewhere, and for the cmp costs it claims that it was unclear whether the Contech bid represented actual prices. CSXT even adjusted SECI’s Means Handbook costs, largely without explanation. CSXT’s modifications are unsupported and they senselessly raise the costs for culverts by a factor of more than 2.

The Contech price sheet was provided by Contech at a request from Crouch Engineering. *See* Opening e-workpaper “Contech Aluminized Steel Culvert Prices.pdf.” These are actual costs available to the SFRR. As CSXT expressed confusion with the sheet in its Reply, SECI asked Contech to provide additional details on what is included in these prices. Contech indicated that the pricing included the cost of the culvert, necessary culvert couplings, shipping and handling, and delivery on site at a distance of 200 miles. *See* Rebuttal e-



workpaper “Contech Follow-up.pdf.” Thus, SECI continues to use its Opening cmp costs on Rebuttal.

SECI’s crushed rock bedding costs were derived from the Trestle Hollow Project cost for subballast for culverts. The Trestle Hollow Project subballast costs are discussed in more detail in Part III-F-3. Regardless, as SECI has already explained in this section, the Trestle Hollow Project costs are valid and feasible. Consequently, SECI continues to use its Opening unit cost for the culvert bedding.

As for the Means Handbook unit costs, CSXT modified a number of costs without explaining why SECI’s costs are not feasible except to say, deep in a workpaper, that it disagrees with some quantities calculations and therefore it rejects the unit costs. *See CSXT Reply e-workpaper “Culverts.pdf.”* CSXT’s off-hand rejection is unsupported. Unit costs are unit costs; a difference in volume would not necessarily invalidate these costs. Thus, SECI continues to use the same Means Handbook unit costs that it utilized on Opening.

**ii. Culvert Installation Plans**

CSXT states that it “generally” accepted SECI’s culvert installation plans. CSXT Reply at III-F-50. SECI, therefore, continues to use its Opening installation plans.

SECI does note, however, that CSXT made many changes to SECI’s installation plans that are buried in its workpapers, including adding costs for

digging a trench for the depth of the pipe. *See* CSXT Reply e-workpaper “Culverts.pdf.” This is unnecessary as the pipe can and should be laid as a fill is being built. In other words, a trench should not have to be excavated again to place a pipe. On Opening, SECI did, however, include a modest amount of digging to ensure that the culvert bed is properly set up to lay down crushed stone. SECI continues to include the same cost for this activity on Rebuttal.

CSXT also modified the average depth of fill for the culvert installations by assuming a depth of fill of 8 feet and for bridges converted to culverts it used a depth of fill of 6 feet. SECI used 2 feet on Opening. On Rebuttal, SECI agrees that 6 feet is more likely to be required here. As such, it has included additional costs for this modification.

### **iii. Culvert Quantities**

On Opening, SECI used the limited culvert inventories provided by CSXT in discovery to form an initial culvert list. However, SECI’s engineers determined that CSXT’s culvert data had several significant problems. First, the culvert inventories were not comprehensive – CSXT provided culvert inventory data for only 729.21 miles of the 2,092.40 miles of CSXT lines being replicated. To develop a cost for the remaining segments, SECI’s engineers developed an average culvert cost per mile for the Western Division and applied it to those Western Division segments where no culvert inventory was provided. For the missing Eastern Division segments, SECI’s engineers applied an average culvert

cost per mile based on the culvert data for the portions of the Eastern Division east and south of Point of Rocks, MD.

CSXT followed the same approach, although the parties differed somewhat on the total miles covered by the inventory. SECI inadvertently utilized a figure different from the 729.21 miles in its Opening calculations, but has corrected this on Rebuttal.

On Opening, SECI intended to convert bridges less than 20 feet to culverts. However, in so doing, it inadvertently left several bridges longer than 20 feet out of the bridge count. This has corrected on Rebuttal. CSXT, on the other hand, converted all of these bridges, including an 1,800-foot bridge, to a culvert. SECI has also corrected these errors on Rebuttal.

CSXT also notes that the average length of culverts should be longer at double track locations. SECI's agrees, but has determined that CSXT's average length of 61 feet is too long due to CSXT's 8 foot depth of fill assumption. As CSXT used a 6 foot depth of fill for bridges being converted to tunnels, and SECI has accepted that depth, SECI has adjusted the average length of the culvert pipe to account for the reduced depth of fill. SECI calculated an average length of 50 feet on Rebuttal. *See* Rebuttal e-workpaper "Average Culvert Lengths.pdf."

SECI's engineers also note that CSXT's Reply culvert spreadsheet and related workpapers are a quagmire, in that CSXT increases all manner of quantities without sufficient explanation. For example, CSXT complains, again deep in its workpapers, that certain formulas in SECI's Opening culvert

spreadsheet are incorrect,<sup>14</sup> but CSXT provides no explanation for its criticisms nor does CSXT provide any rationale for its “fix.” CSXT also complains that SECI should not have considered the size of the culvert in considering the length of the culvert, but then CSXT did the same thing because, of course, the diameter of the culvert factors into the overall depth.

Finally, CSXT also included a design for bridge-to-culvert locations, but that design is unworkable and overstates the number of pipes. *See* CSXT Reply e-workpaper “Culverts.pdf.” In particular, CSXT’s engineers placed the pipes so that they are touching each other. However, proper culvert installation requires that the pipes have a distance of at least one half of the pipe diameter between the pipes filled with a rock layer to provide protection for the pipes.

With the modifications described above, SECI’s revised rebuttal culvert costs are \$41.7 million. *See* Rebuttal e-workpaper “Rebuttal Culvert Costs.xls.”

**e. Other**

**i. Sideslopes**

The parties agree on an average 1.5:1 sideslope.

**ii. Ditches**

The parties agree on the specifications for ditches.

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<sup>14</sup> *See* CSXT Reply e-workpaper “Culverts.pdf.”

### **iii. Retaining Walls**

On Opening, SECI developed retaining wall quantities using the ICC Engineering Reports. To be conservative, SECI applied all of the retaining wall quantities from a given valuation section to the SFRR's mainline segments, even though that may have resulted in an overstatement of the quantities because it is possible that such structures were built for side tracks, yard tracks or other facilities that the SFRR is not constructing. CSXT generally follows the same approach, but makes two adjustments that significantly increase the total costs for retaining walls. First, CSXT purports to adjust the quantities for a modern day roadbed, and second, it modifies the gabion wall construction methodology. In both cases it did not discuss the details of its \$153 million of adjustments in its Reply Narrative. CSXT's changes are without merit.

#### **(a) Wider Roadbed Width**

CSXT brings out a tired, and rejected, argument that the retaining wall quantities should be increased due to differences in roadbed width between those used when the ICC Engineering Reports were compiled and those used today. CSXT Reply at III-F-51-52. This argument was raised recently in *AEP Texas* and rejected by the Board. *See AEP Texas* at 84. Before turning to the merits, SECI notes that the same engineers that CSXT is using raised the exact same arguments in *AEP Texas*. Indeed, SECI believes that the workpapers may even be the same, as the date on some of the materials is circa 2001. Regardless, CSXT has not offered any new rationale that is different than that raised and

rejected in *AEP Texas*. On this basis alone, CSXT's additional retaining wall quantities are unwarranted.

CSXT's methodology is also flawed. First, CSXT has provided no evidence detailing the construction of any new retaining walls to accommodate modifications to the original roadbed width, nor has it shown that the original roadbed width has been significantly increased in size (the adjustments made to the ICC Engineering Report earthwork quantities to account for a modern 24-foot roadbed are based on an assumption of the original roadbed width but, in some cases, the roadbed width may not have been modified from the original construction).

Second, CSXT has assumed that, at every retaining wall location, the topography is such that the surrounding earth side wall is always going upward (in a cut) or downward (in a fill) as one moves out from the center of the roadbed. This is simply not the case. CSXT's drawings of these circumstances in its Reply workpapers have no basis in reality. In particular, the side retaining walls do not always increase; they may actually decrease or they may stay the same. The only way to know for certain what impact a wider roadbed would have on a retaining wall is to look at each and every retaining wall location and ascertain the surrounding topography. Thus, if the topography is sloping upward away from the roadbed, a wider roadbed would result in a taller retaining wall in a cut and a shorter retaining wall for a fill. However, if the topography is sloping downward away from the roadbed, the opposite would occur (*i.e.*, a wider roadbed would

result in a shorter retaining wall in a cut and a higher retaining wall in a fill).

Finally, if the topography is flat, widening the roadbed would have no impact on the height of the retaining wall. CSXT provides no evidence that it reviewed all existing retaining wall locations and determined that in every instance the retaining wall would need to be enlarged. Such a result is illogical.

In addition, CSXT assumes that the wider roadbed extends equally on each side of the track centerline. CSXT has provided no support for this assumption. If there is a location where a retaining wall is necessary, it is quite possible that the entire amount of the widened roadbed could be accommodated on the side where the retaining wall is not required, meaning that no adjustment in size is necessary. In short, there are several scenarios where the retaining wall quantities could be decreased as well as increased, and CSXT has relied only on unsupported assumptions.

CSXT's increase in retaining walls heights is also flawed because it assumes that all retaining walls from the ICC Engineering Reports were four feet tall and that the new walls must be six feet tall. CSXT has provided no evidence that the all retaining walls from the ICC Engineering Reports are four feet tall, as the ICC Engineering Reports do not show the height of any retaining wall. In addition, CSXT provided no basis for its assumption that all retaining walls on the SFRR would be six feet in height. As such, CSXT's increase in the retaining wall height is completely unsupported.

**(b) Masonry Walls**

SECI also takes issue with CSXT's modifications to the thickness of the retaining walls. On Opening, SECI provided gabion baskets in place of the 21 varieties of masonry walls shown on the ICC Engineering Reports. SECI's use of gabion baskets and a one-for-one CY quantity replacement is the same methodology employed in other cases. *See WFA/Basin* at 89, where the parties agreed on the existing retaining wall quantities, and *AEP/Texas* at 84, where the only dispute on quantities was BNSF's failed attempt to double the quantities for the wider roadbed. In this case, CSXT abandons the accepted methodology and instead proceeds from a flawed assumption, namely that all of the masonry walls on the SFRR are eight inches thick and made of steel-reinforced concrete. CSXT then concludes that a 3-foot thick gabion would be needed in those locations in lieu of the 8-inch thick steel reinforced concrete, resulting in a threefold increase in the quantities vis-à-vis the ICC Engineering Report quantities.

CSXT's modifications are unsupported. CSXT has provided no evidence that all masonry walls were made of 8-inch thick steel-reinforced concrete. Indeed, the ICC Engineering Reports do not show the height, length or depth of each retaining wall; only total cubic yards for each valuation section by type of masonry are shown. Moreover, the ICC Engineering Reports show that a vast number of different materials were used. Below is a list of the various materials used for masonry retaining walls as identified on the ICC Engineering Reports:



1. Concrete plain
2. Concrete reinforced
3. Brick
4. Brick in mortar
5. Brick in mortar secondhand
6. Small rubble dry
7. Rubble dry
8. Large rubble dry
9. Small rubble in mortar
10. Rubble in mortar
11. Large rubble in mortar
12. Rubble in masonry 1st class
13. Second class dry
14. Second class in mortar
15. Ashlar
16. Ashlar sandstone
17. Ashlar in mortar
18. Large square stone dry
19. Square stone in mortar
20. Culvert stone
21. Faced stone in mortar

SECI's quantities are most likely overstated to begin with because, as explained above, SECI assigned all retaining walls in each valuation section to the route miles of the valuation section and applied the amount per route mile to the main line miles of the SFRR. Stated differently, as the ICC Engineering Reports do not show the location of retaining walls, SECI assumed all retaining walls were put in place for the main line track. Many of the valuation sections where the masonry retaining walls are most prevalent include many miles of second and third main and yard track that the SFRR is not constructing. Yet, SECI conservatively included the total amount of retaining walls for the valuation section in determining the average amount per route mile. For the top ten valuation sections with the most masonry retaining wall quantities, the main line

miles represent only 6 to 63 percent of the total miles; for eight of the valuation sections, the route miles are less than 43 percent of the total miles. *See* Rebuttal e-workpaper “CSXT Overstated Retaining Walls.xls.” By assigning all the masonry retaining walls on the ICC Engineering Reports to the main line, SECI has clearly overstated the quantities.

To demonstrate the absurdity of CSXT’s modifications, for three of the top ten valuation sections with the most masonry, CSXT’s miles of retaining walls exceed the total miles of the segment. *Id.* Simply put, CSXT’s modification of the masonry quantities from the ICC Engineering Reports – an argument that has never been raised before – finds no support in the evidence.

**(c) Timber and Tie Walls**

CSXT accepted the quantities that SECI’s engineers pulled from the ICC Engineering Reports. However, as explained above, CSXT assumed that all of the retaining walls from the ICC Engineering Reports were four feet high and that the SFRR’s retaining walls should be six feet high due to the wider roadbed. SECI has already explained why CSXT’s increased wall heights are unsupported. Moreover, CSXT provided no evidence that any, let alone all, of the timber and tie walls from the ICC Engineering Reports were four feet tall.

SECI’s accepted methodology<sup>15</sup> develops quantities by calculating the SY facing area of the timber and tie walls and replacing that same SY facing

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<sup>15</sup> *See WFA/Basin* at 89, indicating that there was no dispute over the quantities of existing retaining walls.

area with CY of gabions. CSXT acknowledges SECI's methodology in its Reply and did not criticize it. *See* Reply e-workpaper "SFRR Retaining Walls.docx." The difference in quantities between the parties is caused by CSXT's development of linear feet of timber and tie retaining walls based on its unsupported four-foot height assumption. Moreover, for the reasons described above, SECI has likely overstated the retaining wall quantities. As such, SECI continues to use its Opening quantities for timber and tie walls, modified only for the slight increase in route miles on Rebuttal.

**(d) Piles**

The parties agree on the quantities and unit costs for piles.

**(e) Unit Costs**

As with lateral drainage, CSXT added unit costs to excavate for gabion installation and increased the haul for rock from two miles to ten miles. For the reasons described above in the lateral drainage section, CSXT's additional haul distance for rock is unsupported and the additional excavation costs are unnecessary. *See also WFA/Basin* at 89 (approving the unit cost methodology which was accepted by BNSF and employed here by SECI). Thus, SECI continues to use its Opening unit costs for retaining walls.

**iv. Rip Rap**

CSXT accepted SECI's methodology for developing rip rap quantities. However, CSXT again increased the length of haul for the rock materials from two miles to ten miles simply because SECI suggested that such

materials might not be readily available from the wasted excavated rock. By “not readily available,” SECI only meant that the wasted excavated rock would not be located right next to where the rip rap was needed. SECI did not state that rip rap material would not be available locally. SECI was being conservative by including the cost for rip rap material because wasted excavated rock would certainly be re-used as rip rap wherever practical. In addition, the unit cost methodology, including the two-mile hauling distance, has been accepted by the Board and defendant railroads in the two most recent SAC proceedings. *See WFA/Basin* at 90 and *AEP Texas* at 84, where the disputes were over quantities and not unit costs. In addition, CSXT provided no support for its hauling distance. As such, SECI continues to use its Opening unit cost for rip rap.

**v. Relocating and Protecting Utilities**

CSXT accepted SECI’s Opening costs for this activity. *See* CSXT Reply at III-F-52.

**vi. Seeding/Topsoil Placement**

CSXT accepted SECI’s Opening quantities for this item. CSXT claims to have rejected SECI’s Opening unit cost, which was based on the Trestle Hollow Project, in favor a unit cost based on the Means Handbook. However, an examination of CSXT’s workpapers shows that CSXT used SECI’s unit costs. Thus, SECI continues to use its Opening unit cost for seeding/topsoil placement.

**vii. Water for Compaction**

CSXT accepted SECI's Opening position that water for compaction was not necessary in the SFRR's territory.

**viii. Surfacing for Detour Roads**

CSXT accepted SECI's inclusion of \$3.2 million for road detours on the recently-constructed line branch lines that the SFRR is replicating.

**ix. Construction Site Access Roads**

On Opening, SECI did not include any costs for construction site access. As SECI explained, such costs are typically incidental to the construction costs and not generally paid for separately. SECI noted language from the Trestle Hollow Project that supported this position. While CSXT blusters about potential access issues, it only added a small number of access roads (costing just over \$1 million), none of which are supported.

CSXT claims that it developed a detailed analysis of where construction site access roads would be needed, but a review of CSXT's workpapers shows that CSXT has provided no support for its access roads. CSXT has two relevant workpapers, "CSX Modified SFRR Grading.xls" and "Tunnel Access Roads.xls." In the grading spreadsheet, tab "IIIF\_10 Othr Cst," CSXT indicates that it included roads to reach microwave towers and tunnels. The microwave tower figure is not linked to any other calculations and SECI could find no support for the quantities. The access roads for tunnels were shown in the tunnel access road spreadsheet. However, CSXT's calculations have no references

or explanations as to how CSXT determined the length of access that would be required; there is simply a number of feet next to each tunnel entry. As CSXT's quantities lack support and CSXT has not demonstrated that these roads would be needed in any case, SECI has continued to exclude such costs on Rebuttal.

**x. Environmental Compliance**

CSXT accepted SECI Opening environmental compliance costs of \$0.7 million. *See* CSXT Reply at III-F-54.

**3. Track Construction**

On Opening, SECI developed the unit costs and quantities for SFRR track construction based on quotes from vendors and design standards that met or exceeded those used by other Class I and regional railroads. While CSXT accepts many of the parameters selected, it still managed to suggest unnecessary design and unit cost changes that drove up SFRR's track construction costs by over \$400 million. As shown below, CSXT's changes are without merit, and SECI has continued to use its Opening costs and quantities (adjusted to reflect the slight change in track miles discussed in Part III-B.) Before turning to the individual items of difference, SECI notes that more than half of the \$400 million difference is attributable to CSXT's new and enlarged yards as well as the construction of the NS-owned MGA lines. As explained in Part III-B and III-C, SECI is not building these additional facilities. However, SECI's track construction costs have risen

from \$1.950 billion on Opening to \$1.968 billion on Rebuttal due in large part to the addition of interchange tracks and intermodal and Transflo yard facilities.<sup>16</sup>

**a. Geotextiles**

CSXT argues that SECI understated the amount of geotextile fabric that is required under the SFRR's turnouts, and that SECI did not provide detailed calculations for its fabric quantities. CSXT Reply at III-F-55. CSXT then claims it recalculated the quantities for all of the turnouts. CSXT misunderstood SECI's unit costs and its calculation methodology.

SECI's unit cost for geotextile fabric was based on a cost per *track foot* not a cost per *square yard*, which CSXT appears to have thought. Thus, when SECI included 476 track feet<sup>17</sup> of fabric in a No. 20 turnout (220 feet long), for example, it included enough fabric to cover both the mainline portion of the track as well as the diverging track. SECI's quantity allowed for overlap between the two legs of the turnout as well as extra length to extend slightly beyond the end of the turnout. As such, SECI has continued to use its Opening geotextile quantities and costs.

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<sup>16</sup> SECI also determined that its Opening track mile costs inadvertently overstated mainline sidings, which should have been included as interchange or set-out tracks. SECI has corrected this on Rebuttal.

<sup>17</sup> SECI notes that it inadvertently labeled the quantity as square yards, but SECI still multiplied it by the track foot unit cost.

**b. Ballast and Subballast**

Ballast and subballast represents the bulk of the difference in track construction costs between the parties. CSXT lodges several design and unit cost criticisms, which (as explained below) are without merit.

**i. Ballast and Subballast Quantities**

For mainline track, SECI used a 12-inch layer of ballast and 6-inch layer of subballast. This exceeds the standard used by CSXT for many years of eight inches of ballast and six inches of subballast. *See* Rebuttal e-workpaper “CSXT Ballast Section.pdf.” Notwithstanding the additional four inches of ballast that SECI provided, CSXT argues that SECI should have included still more ballast to account for superelevation on curved tracks. Simply put, the additional amount is unneeded. SECI has already provided sufficient ballast. By varying the depth of the ballast in curves and nearby tangent track, more than sufficient ballast will be available to handle any superelevations. *See* Rebuttal e-workpaper “Ballast Distribution.pdf.” Thus, SECI continues to use the same ballast quantities on Opening.

CSXT also argues that SECI incorrectly calculated the subballast and ballast quantities required for multiple track segments. However, SECI cannot determine what if any difference this had on the costing process used by both parties, nor was SECI able to verify CSXT’s calculations. Regardless, SECI built all sidings and other side-by-side tracks such as yard tracks as individual tracks with a ballast and subballast section. In other words, SECI overstated the



amount of ballast and subballast that SFRR would need because side-by-sections would have elements that overlap. *See* Rebuttal e-workpaper “Ballast Overlap.pdf.” SECI also notes that CSXT used the same ballast and subballast quantities in its tangent track as SECI did, and it calculated the costs for sidings and other side-by-side track in the same way that SECI did. As such, SECI cannot determine how CSXT’s criticism impacted the total costs calculated by either party. Accordingly, SECI continues to use its opening ballast and subballast quantities.

**ii. Ballast and Subballast Unit Costs**

On Opening, SECI’s ballast costs were derived from an average of ballast costs from seven sources provided by CSXT in discovery. CSXT generally agrees with this approach, but argues that for track in Indiana, SECI could not get ballast to the construction railheads from the listed sources until the Ohio River bridge is completed. Thus, it added a source on the Indiana side of the river. In addition, CSXT also added three other sources that it implies would be needed to work around tunnels and bridges, but it provided no specific examples of how these projects would impact the laying of ballast.

CSXT’s additional ballast sources and revised unit costs are unwarranted. Moreover, CSXT’s unit costs are too high. SECI notes generally that there are many quarries on and around the SFRR’s route, and that inquiries to some of these locations demonstrates that the SFRR’s opening unit costs (based on CSXT data) could easily be matched or bettered. *See* Rebuttal e-workpaper

“Quarry Map.pdf.” In fact, when SECI averaged its additional quotes in with its original unit costs, its ballast unit cost fell. See Rebuttal e-workpaper “New Ballast Quotes and Average Unit Cost.xls.” However, to be conservative, SECI continues to use its opening unit costs.

The Ohio River bridge issue is a red herring. The SFRR is only building 41 route miles in Indiana. Ballast laying is usually the last activity that occurs to finalize the track construction. As the bridge is scheduled to be finished in August of 2008, there would be ample time to bring the ballast over the bridge and lay it. Thus, the inclusion of an Indiana source is unwarranted. Moreover, CSXT’s unit cost of \${ } per ton for ballast from Indiana is higher than all of the other sources that SECI utilized, yet CSXT averaged this cost in with all the other costs despite the limited use that the SFRR would have for that source.

SECI also takes issue with the three unit costs that CSXT added. First, CSXT has not demonstrated any specific location where ballast laying would actually be hindered by another project, and thus the additional, higher costs are unjustified. Second, when SECI contacted sources in other places near the SFRR’s route, the new quotes actually brought down the average unit cost from the \${ } per ton used on Opening. Yet CSXT managed to add four sources that were all considerably more expensive than SECI’s costs – including some sources that were more than double the average cost. CSXT’s additional sources are not explained, nor has CSXT demonstrated that the sources selected on

opening were inadequate. For these reasons SECI continues to use its average ballast price from Opening.

As for subballast, SECI used a unit cost of \$13.00 per ton from the Trestle Hollow Project. CSXT complains that the Trestle Hollow Project cost is not representative of the cost the SFRR would incur. However, laying subballast is laying subballast whatever the size and location of the project. CSXT has not shown, nor can it, that laying subballast for this project was somehow different from what would occur on the SFRR. SECI's delivered cost was for an actual project – not just a random series of quotes. This plainly demonstrates that such unit costs are feasible. As shown in Rebuttal e-workpaper "Quarry Map.pdf," there are many locations where subballast could be delivered to the SFRR either by truck or rail. SECI's engineers contacted some of these locations and determined, once again, that it was possible to obtain the aggregates at prices similar to those that SECI used on Opening. *See* Rebuttal e-workpaper "New Ballast Quotes and Average Unit Cost.xls."

As for the subballast unit costs utilized by CSXT (CSXT Reply at III-F-58), these costs are overstated. First, CSXT selects two sources that are unnecessarily expensive, Jacksonville and Savannah – simply eliminating these two sources brings CSXT's average down to \$16.39. Even assuming that CSXT's series of quotes were superior to actual project costs, these two costs are not needed as there is already a Georgia source, Kennesaw, which is substantially cheaper. In addition, SECI's disagrees with CSXT that subballast is not available

south of South Carolina. As the quarry map shows, there are many quarry facilities in Georgia and Florida. Finally, SECI takes issue with CSXT's objection on to using the Trestle Hollow subballast costs, but its ready acceptance of the average 40 mile shipping distance based on Trestle Hollow. CSXT's inconsistent positions with respect to the Trestle Hollow Project are telling.

Finally, SECI's notes that CSXT did not provide any subballast cost data in its discovery documents. In past SAC cases, the unit cost for subballast has generally been lower than ballast since subballast material requirements are less stringent than those used for ballast. Indeed, quotes for subballast were lower here than the quotes for ballast from the same sources. Thus, SECI's submits that its \$13.00 per ton is conservative in light of CSXT's actual ballast costs, which are lower than the subballast cost that SECI is using.

**c. Ties**

The parties agree on the spacing of ties. The parties also agree on the unit costs for ties.

**d. Track (Rail)**

**i. Main Line**

The parties agree on the weight of rail used on the SFRR mainlines. The parties also agree on the units costs for rail.

**ii. Yard and Other Tracks**

The parties agree on the weight of rail used in the SFRR's yard, interchange, and other tracks. The parties also agree on the units costs for this rail.

**iii. Field Welds**

The parties agree on the field weld specifications and unit prices.

**iv. Insulated Joints**

Insulated joints are addressed in Part III-F-6 below.

**v. Switches**

The parties generally agree on the unit costs and sizes for the SFRR's switches. However, without explanation, CSXT used a large number of No. 8 turnouts – a size SECI did not use. It appears that the No. 8 turnouts are for the 884 customer locations that CSXT argues the SFRR should add. As explained in Part III-B, SECI has added only 96 customer locations (28 were already provided for on Opening). SECI has used No. 10 turnouts for these locations since it is the smallest size turnout that SECI is using.

Switch machines are addressed in Part III-F-6 below.

**e. Other**

**i. Rail Lubricators**

The parties agree on the spacing and unit costs for rail lubricators.

**ii. Plates, Spikes and Anchors**

The parties agree on the specifications and unit costs for plates, spikes and anchors.

**iii. Derails and Wheel Stops**

The parties agree on the placement methodology and unit costs for derails and wheel stops.

**iv. Materials Transportation**

Transportation costs are assigned to each item. As such no additional transportation costs have been added by the parties.

**v. Track Labor and Equipment**

CSXT has accepted the labor costs proposed by SECI on Opening. However, CSXT suggests that the labor costs did not include work train costs, which it claims to have added. SECI has not found any support for CSXT's work train costs in its workpapers, nor can SECI determine where CSXT has added this cost. In addition, SECI notes that the major work required, such as surfacing and lining track, cannot be done without distribution equipment, and the quote it used on Opening includes this service. As such, additional work trains would not be necessary. Therefore, SECI continues to use its opening labor costs, which CSXT also used on Reply.

**4. Tunnels**

On Opening, SECI derived its tunnel inventory and tunnel lengths from materials provided by CSXT in discovery. *See* Opening e-workpaper "Tunnel Construction Costs.xls." Consistent with Board precedent, SFRR's engineers utilized the base unit cost of \$2,561 per linear foot ("LF") developed in *Coal Trading Corp.*, 6 I.I.C.2d at 422, and then indexed this cost from 1980 to 1Q09. This procedure yielded a unit cost of \$7,431 per LF. The unit cost was multiplied by the total feet of tunnels (35,170 LF) to yield a final tunnel cost of \$261,348,270. *See* Opening e-workpaper "Tunnel Construction Costs.xls."

On Reply, CSXT has unnecessarily increased the tunnel unit cost due to its faulty assumption about the unit cost utilized by SECI. In particular, CSXT assumed, based on an incorrect reading of the *WFA/Basin* decision, that the *Coal Trading* unit cost was for a timber-lined tunnel, a type of tunnel that has not been built on a railroad for nearly 100 years. CSXT then rejects the *Coal Trading* unit cost and substitutes a myriad of new and, not surprisingly, more expensive unit costs for several different tunnel types. As explained below, CSXT's assumption regarding SECI's unit cost is incorrect, and therefore SECI continues to use its Opening, and long approved, unit costs.

In *WFA/Basin*, the Board accepted the development of the tunnel unit cost using the same methodology that SECI used on Opening, but it also accepted a tunnel-related additive to MOW costs proposed by BNSF. See *WFA/Basin* at 107. Specifically, BNSF argued that the tunnels being replicated were timber-lined tunnels rather than the typical concrete and steel tunnels built today, and that such tunnels required additional upkeep. *Id.* *WFA/Basin* responded that the unit cost utilized for tunnels did not specify the tunnel type (*e.g.*, timber-lined or concrete and steel). However, *WFA/Basin* did note that its MOW witness had been involved with the construction of a tunnel during the early 1980s (about the same time period that the *Coal Trading* unit cost was derived from) where the unit cost was similar to the *Coal Trading* unit cost, and that tunnel was concrete-lined and steel reinforced. Therefore, *WFA/Basin* argued that the tunnel from the *Coal Trading* case was likely to have been a concrete and steel

tunnel and not a timber-lined tunnel. The Board rejected WFA/Basin's assertion on the grounds that a witness' recollection was not sufficient, and as the tunnels being replicated were timber-lined, WFA/Basin was stuck with the MOW additive since it could not show that the tunnel unit cost would include concrete and steel construction techniques. *Id.*

SECI's Opening tunnel unit cost covers the construction of concrete-lined and steel reinforced tunnels for the reasons set forth below. First, any tunnel built in recent periods would not have been timber-lined. Such construction techniques are no longer utilized. Indeed, as early as 1902, treatises were already addressing how to swap out timber-lined supports for more durable materials – a point CSXT makes itself. *See* Charles Prelini, *Tunneling: A Practical Treatise* 280 (1902). Second, more recent concrete-lined tunnel projects have actually been constructed for less than the 1980 *Coal Trading* unit cost. For example, a double bore railroad tunneling project was undertaken in 1993 in the Dallas area. The unit cost for the concrete-lined tunnel was \$2.490 per linear foot (inclusive of both bores) – as indexed to 1Q09. *See* rebuttal e-workpaper "Tunnels.pdf" for details of the project. Likewise, another double tunnel project undertaken that same year was also concrete-lined and cost less per linear foot (\$4,853) than SECI's unit cost in 1Q09 dollars. The second project also involved particularly challenging fractured rock formations. *Id.*

In the mid-1980s, Canadian Pacific built two single track tunnels as part of a \$420 million expansion. *See* Rebuttal e-workpaper "CP Project



Article.pdf.” The tunnels were horseshoe shaped and excavated to almost 19 feet wide and 29 feet high, which is larger than the dimensions utilized by CSXT on Reply. The tunnels included concrete wall and crown linings as well as 13-inch thick floor slabs. According to an *Engineering News-Record* article, the tunnel boring accounted for approximately one-third of the cost of the project, and the two tunnels, when combined, totaled approximately 10.1 miles. *Id.* When the total tunnel feet are divided into 1/3 of the project cost (the cost for the tunnels), the cost per linear foot comes to \$2,358 in 1986 dollars (\$5,111 when indexed to 1Q09), which is less than the indexed 1980 *Coal Trading* unit cost.

The aforementioned projects demonstrate the feasibility of SECI’s Opening tunnel unit cost for either single or double track locations. Moreover, the projects demonstrate that concrete lined tunnels can be constructed at SECI’s Opening unit cost or less. Consequently, SECI continues to use its Opening cost per linear foot on Rebuttal.

CSXT also noted that it corrected SECI’s tunnel inventory. CSXT appears to have added three tunnels. The first is at Point of Rocks, MD. SECI did not build this tunnel because there are two main-track alignments in this area, one with a tunnel and one without a tunnel. SECI used the alignment that does not have a tunnel. CSXT also added two additional tunnels that appear to be on the NS-owned MGA lines, which SECI is not building. CSXT also incorrectly identified two tunnels, the Catoctin and Harpers Ferry tunnels, as double track tunnels. SECI’s configuration for both of these locations, which CSXT accepted,

has only one track. *See* Rebuttal Exhibit III-B-2 and Opening e-workpaper “Tunnel Construction Costs.xls” for milepost information.

## **5. Bridges**

On Opening, SECI’s bridge engineers, Messrs. Crouch and Lindsey, provided for a variety of bridge types and designs to accommodate the bridges being built by the SFRR. Consistent with the approach used in other SAC cases, bridges were categorized into types and built to a general specification for that bridge type (some bridges incorporated multiple span types into a single bridge). However, in so doing, SECI’s engineers had to contend with a number of data-related problems. First, CSXT’s bridge data did not include the height of any of the bridges. Second, the bridge data included the total feet of each bridge and the number of spans, but it did not specify the individual span lengths. Third, the bridge data did not describe the type of crossing (*e.g.*, over a waterway, over road, etc.). As such, it was impossible to determine from the bridge list whether a given bridge may have a special horizontal and/or vertical clearance requirement that must be met, particularly when crossing navigable waterways. Indeed, SECI’s engineers had to expend considerable effort just to develop an educated guess as to what obstacle was being crossed.

With these data impediments in mind, SECI’s engineers had to rely on some general assumptions to design and cost the SFRR’s bridges. First, SECI’s engineers provided a standard height for each bridge based on the obstacle crossed as best they could determine. For navigable waters, SECI’s engineers

used the United States Coast Guard's most recent bridge clearance requirements, which is available on the Coast Guard website (<http://www.uscg.mil/hq/cg5/cg5411/Bridge.asp>), and which was included as SECI's Opening e-workpaper "USCG\_Clearance\_Guide.doc."

CSXT takes issue with a number of SECI's bridge designs, costs and approaches, and suggests that SECI's designs "are riddled with errors," but most of CSXT's arguments are misplaced and incorrect. As shown below, SECI's bridge designs and costs are feasible and well supported.

Issues with CSXT's Reply Bridges. The bridge designs used by SECI's engineers were based on real bridges designed, bid out and overseen by Crouch Engineering. Thus, the engineers did not include a long analysis of loading capabilities, etc. because all of the bridges were already designed, based on real-world counterparts, to carry 286,000 lb cars – the heaviest cars being handled by the SFRR. Despite the origin of the SFRR's bridge designs, CSXT has suggested that these bridges do not meet applicable AREMA standards and/or Cooper E-80 loading standards. However, CSXT is incorrect, and the Cooper E-80 loading standard is not relevant here as it applies to 315,000 lb cars (although SECI's designs do meet the Cooper E-80 standards as well). *See* Rebuttal e-workpaper "Cooper E-80.pdf."

CSXT's over-reliance on Cooper E-80 standards combined with its incorrect reading of elements of SECI's design resulted in a massive increase in bridge costs. These flawed calculations, coupled with CSXT's inflated unit costs,

suggest that any reliance on CSXT's Reply bridge designs and costs would be misplaced.

Another problem with CSXT's evidence is that CSXT costed all bridges using a skew of 15 degrees, even though CSXT's Reply Exhibit III-F-1 states that it did not attempt to account for the cost of building skewed bridges. CSXT has provided no details to support the application of a 15 degree skew for all bridges. As such, CSXT's Reply bridge calculations are overstated.

**a. Bridge Inventory**

The Opening bridge inventory for the SFRR included 786 railroad bridges and 364 highway overpasses. On Reply, CSXT suggests that SECI omitted 133 railroad bridges and 104 overhead bridges. CSXT analysis is incorrect. The table below summarizes the discrepancies:

<b>No. of Bridges</b>	<b>Summary</b>
77	The additional bridges are located on the NS-owned MGA lines, which the SFRR is not building.
10	The bridges were converted to culverts.
13	The bridges were not identified in discovery materials provided by CSXT. On Reply, CSXT included these bridges, but they were designated as "PAL" bridges. The PAL (Paducah & Louisville Railroad) is a shortline that is not being constructed by the SFRR. Instead, the SFRR is using trackage rights for these facilities.
2	Two bridges, 00H 323.5 and 00H 323.6, were not labeled with Division or Subdivision information when CSXT provided the data in discovery. As such, they were not readily identifiable by sorting on that criteria. CSXT's additional Reply data is untimely.
1	CSXT includes a bridge, BSF 0.15, which appears to be in the Lumberport/Haywood area. However, CSXT has not demonstrated that it is located on the line being replicated.

SECI has determined that it inadvertently omitted 31 bridges on various subdivisions, as well as the 104 overhead bridges described by CSXT. SECI has included these bridges in its Rebuttal bridge count, and costed those bridges consistent with SECI's Opening units costs (as modified on Rebuttal) and its bridge span selection methodology. The omitted bridges are shown in Rebuttal e-workpaper "Rebuttal Bridge Construction Costs.xls," tabs "Missing East" and "Missing West."

**b. Bridge Design and Cost Overview**

SECI's bridges were designed by engineering witnesses who have extensive bridge design and construction experience. For example, Mr. Lindsey has designed numerous reinforced concrete, pre-stressed concrete, and steel bridges, including deck girder and through plate girder bridges. He has also worked on the design and rehabilitation for hundreds of timber, steel and concrete bridges, predominantly in the eastern United States but also in western states.

Mr. Lindsey's recent projects include designing a through plate girder bridge for NS in Bucyrus, Ohio; various bridge widening projects for NS at Mableton, GA; a steel pile deck girder bridge replacement for a 77-span bridge in the Obion River floodplain on the TennKen RR; an emergency bridge replacement on the Huntsville-Madison County Railroad Authority; a pre-stressed concrete bridge replacement on the Tennessee Southern Railroad; and emergency replacement of a failed pinned through truss bridge in southern Indiana.

In addition, Mr. Lindsey has extensive experience in railway bridge inspection, load rating, design, and construction project management, having designed, inspected and load rated hundreds of railroad bridges. Mr. Lindsey has even written programs for handheld personal computers that are used for load rating calculations in the field.

Mr. Lindsey also conducts annual bridge inspections, develops load ratings and bridge reports, and plans and executes railroad bridge rehabilitation and replacement programs for many railroads and railroad authorities. He was the

Project Manager for inspecting and load rating over 300 bridges on the New England Central Railroad, and is the Project Manager for annual bridge inspection and rehabilitation programs for ten railroad authorities in Tennessee.

As SECI noted on Opening, Mr. Crouch was a Project Engineer for NS where he was responsible for engineering design and plan review, the bid phase, and the construction engineering phase for track and bridge construction projects. As head of Crouch Engineering, Mr. Crouch has been responsible for the design and construction of numerous concrete, steel, and timber bridges, as well as the inspection and rehabilitation design for hundreds of steel, concrete, masonry, and timber bridges for Class I and short-line railroads.

Given the extensive experience of these witnesses, they are well aware of the SFRR's bridge requirements and how to design bridges to meet those requirements. As demonstrated below, CSXT's criticisms of SECI's Opening bridges are unfounded. Moreover, SECI's engineers demonstrate that CSXT so-called fixes for the alleged problems with SECI's bridge designs amount to unwarranted "gold plating."

**i. Bridge Design**

**(a) Use of Multiple Bridge  
Span Types in a Single Bridge**

CSXT did not provide any data in discovery regarding the size or heights of the spans used in any of its bridges. The only data that CSXT did provide was the number of spans. Given this problem, SECI's engineers kept, for

the most part, the number of spans shown in the discovery documents and then attempted to provide the most economical combination of spans to meet the overall length requirement of a given bridge (and they assumed bridge heights were consistent across spans). Thus, in some cases various bridge span types were combined. In SECI's opening evidence, these were referred to as Type I, Type II, Type III (*etc.*) bridges, but they generally described a given span type. If a bridge had only one Type III span, it would then be considered a Type III bridge.

CSXT argues that the mixing of span types is novel and would not work, and then dismisses this approach out-of-hand. CSXT Reply at III-F-67. However, CSXT does not specifically explain what it has done in the alternative. Indeed, a review of CSXT's bridge spreadsheet shows a hodgepodge of adjustments to the spans and bridge types. In some cases, it appears that CSXT substituted the highest cost bridge components that might apply to a given bridge (*i.e.*, if SECI had two Type I spans and one Type III span, CSXT made them all Type III spans even though the spans lengths might not have changed). In other cases, it appears that CSXT selected smaller span types but then enlarged those spans beyond the length intended by SECI's Opening designs.

Regardless of the potential problems with CSXT's revised span lengths and type selections, CSXT is incorrect that SECI's Opening approach to bridge span selection is unworkable. Indeed, SECI's engineers are startled by this assertion. CSXT employs all manner of bridge types interchangeably in a given structure. As photographs of CSXT and other railroads' bridges demonstrate, a



variety of piers and substructures can be utilized as need for a given crossing. *See* Rebuttal e-workpaper “Bridge Pictures.pdf.”

**(b) Compliance with AREMA**

CSXT argues generally that SECI’s bridges do not comply with applicable AREMA standards – although CSXT cites only one specific example where it believes a bridge substructure was inadequate. As part of its general AREMA-related arguments, CSXT suggests that two references made by SECI’s engineers are outdated – AREA specifications for Type I bridge slabs and the 1999 AREMA manual for Type IV span fracture critical members. *See* CSXT Reply at III-F-68-69. The one AREMA-specific design complaint made of SECI’s bridges is that the number of piles shown was inadequate. CSXT is incorrect in both its general and specific criticisms.

Initially, SECI notes that the so-called outdated AREA and AREMA references are a red herring. CSXT has not specifically argued or shown that the Type I bridge slabs are inadequate or that the Type IV fracture critical members do not meet current standards. Regardless, both general arguments are incorrect. SECI’s Type I bridge slabs conform to CSXT’s standard drawings 3501-3519B. As shown in Rebuttal e-workpaper “CSXT Type I slab.pdf,” the SFRR’s slab meets this requirement. More importantly, SECI notes that the Type I bridge slab is identical in design to CSXT’s standard bridge design for slabs of this kind, which also cites “AREA.” *See* Rebuttal e-workpaper “CSXT Type I slab.pdf.”

Likewise, the AREMA Manual (2008), § 1.14.3 “Design and Review Responsibilities (1997)” requires the Engineer to be responsible for the suitability of the design of the railway bridge, determining which members or member components are in the Fracture critical Member (“FCM”) category, and to review welding procedure specifications as an integral part of shop drawings for each contract for Type IV fracture critical members. The FCM specifications that pertain to the SECI Type IV Bridge were developed in 1997 as shown in Rebuttal e-workpaper “2008\_AREMA\_Fracture\_Critical.pdf.” As shown in Rebuttal e-workpapers “Type\_IV\_TPG-Calculations.pdf” and “Type IV – TPG\_Plan\_Set.pdf,” the SFRR’s design meets the AREMA requirements.

SECI’s engineers also note that the 1999 AREMA specification for fracture critical members for the Type IV spans are functionally no different from the 2008 AREMA specifications. *See* Rebuttal e-workpapers “2008\_AREMA\_Fracture\_Critical.pdf” and “2008\_AREMA\_Fracture\_Critical\_Commentary.pdf.” Indeed, in these e-workpapers, the Definitions and Design and Review Responsibilities refer back to the 1997 AREMA Manual. Since the referenced specification that CSXT complains of was the 1999 AREMA manual, the Fracture Critical Members were designed appropriately since the newer codes reference the 1997 AREMA Specification.

CSXT also argues that the number of bridge piles in SECI’s designs were inadequate to meet AREMA design standards, and suggests that the additional piles also required that the footings be enlarged. CSXT did not specify

whether it was one particular span type that suffered from this alleged deficiency or all bridge types. Regardless, CSXT is incorrect. As shown in Rebuttal e-workpaper “Bridge pile structures.pdf,” the SFRR’s bridges meet all AREMA standards.

**(c) Clearance Over Navigable Waters**

In discovery, CSXT did not provide any information about what waterways the SFRR’s bridges would cross – in addition to the other data deficiencies noted above. Again, without bridge height or span size data, SECI had no readily available mechanism for determining vertical or horizontal clearances. However, out of an abundance of caution, SECI’s engineers reviewed the lines the SFRR is replicating to look for major waterways because such crossings might require a minimum vertical and horizontal clearance. SECI’s engineers then consulted the Coast Guard’s Bridge Clearance Guide, which is readily available on the Coast Guard’s website as noted above, to determine the minimum clearances required for the few bridges to which Coast Guard standards apply. In this case, SECI’s engineers used a minimum 145 foot horizontal clearance and a vertical clearance of at least 60 feet. SECI notes, however, that the Coast Guard does not list clearance requirements for every river. For such rivers, SECI’s engineers endeavored to use a consistent horizontal and vertical clearance consistent with those clearances that did appear in the Clearance Guide.

Despite, these precautions, in a little over a page of narrative, CSXT seeks to add \$550 million in additional bridge costs by suggesting that SECI’s

vertical and horizontal clearances at certain navigable waterways are inadequate. CSXT's explanation for these changes falls short of justifying most of these extraordinary additives, and as explained later, its unit costs are unjustifiable.

**(i) Moveable Bridge Spans**

CSXT identifies eight bridges with moveable spans that it argues the SFRR must replicate. These bridges are shown in CSXT Reply e-workpapers "FINAL - REV 01-14-10 - Copy of Bridge Construction Costs.xls," tab "Special Bridges" and "Bridge - E.PDF." Before proceeding with the details of these bridges, SECI's engineers note that CSXT has based its selections on its bridge inventory and an out of date publication from the Coast Guard. In some cases, reliance on these documents added unnecessary moveable spans. In addition, for reasons that CSXT does not adequately explain, it added 50 feet to the horizontal clearance and corresponding span length to accommodate the adjacent piers and fender systems. CSXT's unit costs appear to be derived from projects where the cost of a particular moveable span included new piers and fender systems. In addition, CSXT's unit cost divided the total cost by the new horizontal clearance. As such, adding additional feet to the existing span length is unnecessary and overstates the cost for the moveable spans, which as explained are too high in any event.

Potomac River Crossing. First on CSXT's list is a swing span bridge that crosses the Potomac River at Washington, D.C. as part of the 14th St. Bridge complex (CSXT converted this span to a bascule span). Initially, SECI

could not determine exactly which bridge CSXT intended to replicate. The MP marker used by CSXT, 114.54, is for a bridge spanning the Anacostia River, which has no moveable span. Indeed, an Anacostia Waterfront Initiative report noted that the bridge is “extremely low to the water and generally does not allow for passage of a watercraft higher than a canoe.” See Rebuttal e-workpaper “Anacostia Waterfront Initiative.pdf,” at 100. However, upon further examination, it appears that CSXT intended to place a moveable span on the Potomac River crossing at MP 110.32.

The 14th St. bridge complex includes five bridges, three for vehicular traffic, one for the Washington Metro system, and the CSXT bridge, which is commonly known as the Long Bridge. The swing span on this bridge is no longer used. SECI’s operating witness, Mr. Reistrup, recalls that the swing span has not been used since the 1970s. The reason the swing span is no longer in service is that the bridges further up river (the 14th Street bridges and the Memorial Bridge) no longer have moveable spans. Thus, the vertical clearance provided by the swing span is no longer needed. Indeed, even CSXT’s out of date documents show that the some of the bridges adjoining the Long Bridge are not moveable and that the vertical clearance is 27 feet, which is lower than the clearance provided by SECI.

CSXT’s workpapers show the problems of relying on documents that have not been updated. In particular, CSXT used an old Coast Guard publication called *Bridges over the Navigable Waters of the United States* to

determine the clearances for this bridge and the seven other moveable spans. See Reply e-workpaper, "Bridge – B.pdf." The publication date is not specified, but the last version of this document dates from 1984. SECI's engineers suspect that CSXT may be relying on the 1971 version because it shows the Memorial Bridge over the Potomac River as having a bascule span in operation. This span has long been out of service and paved over. Likewise, the same page shows one of the 14th St. Bridge vehicular bridges as having a moving span, but again that span is no longer used. Finally, CSXT's own bridge inventory has not been updated to reflect the fact the swing span is out of service.

Tailrace Canal (Cooper River) Crossing. CSXT's next bridge crosses the Tailrace Canal (a part of the Cooper River) in South Carolina near a system of locks adjacent to Lake Moultrie (MP 361.70), which is not far from Moncks Corner, SC. CSXT describes the moveable portion of this bridge as a vertical lift span (CSXT used a bascule instead) that currently provides a 100 foot horizontal clearance and a 50-foot vertical clearance.

While CSXT did not demonstrate that this span is still in use, SECI determined that it is still operating. Regardless, CSXT has not shown that it paid to put the vertical lift into service in the first place. The Tailrace Canal and nearby Lake Moultrie were actually constructed between 1939 and 1941 as part of the Santee Cooper Project. See <https://www.santeecooper.com/portal/page/portal/SanteeCooper/AboutUs/HistoryofSanteeCooper>. As CSXT's line here predates the Canal and the Lake, it is likely that (much like today when such

improvement are made) the moveable span was paid for by the Santee Cooper Project.<sup>18</sup> However, to be conservative and also consistent with the development of highway overpass costs, SECI has added 10 percent of the cost for a bascule span for this crossing.<sup>19</sup>

Ashley River. CSXT's third bridge crosses the Ashley River at MP 393.70 in the Charleston, SC area. From a review of the area up-river, it appears that the only water traffic requiring a moveable span would be recreational craft. . Given the lack of commercial activity, SECI questions whether a new bridge would need to have a moveable span. Regardless, to be conservative, SECI included 10 percent of the cost of a bascule bridge.

Savannah River. CSXT's fourth bridge crosses the Savannah River at MP 477.8 near Hardeeville, SC. According to CSXT's data, this bridge has a 90 foot horizontal clearance and it uses a bascule mechanism. The fixed highway bridge adjacent to (and upriver from) the CSXT bridge has a vertical clearance of 57 feet. On Opening, SECI built this bridge with a 60 foot vertical clearance and 145 foot horizontal clearance. As such, there is no need for a bascule mechanism on this bridge.

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<sup>18</sup> For example, CSXT's sources for vertical lift bridges include two projects where such lifts were replaced and the federal government paid for nearly all of the costs. These unit costs are discussed in more detail below.

<sup>19</sup> As explained in the unit cost section below, CSXT's bascule lift costs are grossly overstated.

Even if the Board determines that such a span might be necessary, SECI submits that CSXT has greatly expanded and overdesigned this span without justification. CSXT included a 150 horizontal clearance rather than the 90 foot clearance it has today. CSXT's claims its design is based on the Coast Guard clearance requirements. However, this bridge plainly does not meet that standard as currently constructed. Such a change is a barrier to entry that CSXT has not faced. Indeed, even the construction of this bascule element could be a barrier to entry as CSXT has not shown that it paid for the mechanism. To add insult, CSXT again expands the horizontal clearance an additional 50 feet, at which point it argues for adding a vertical lift bridge of undetermined height.

The absurdity of CSXT design is plain when looking at the photograph of this bridge on the next page.





As the picture above shows, this is a modest moveable span that plainly does not warrant CSXT's \$29 million moveable add on, even assuming that such a moveable bridge is needed at all.

Appomattox River. CSXT's fifth bridge crosses the Appomattox River at MP 19.00 near Hopewell, VA. According to CSXT's data, the bridge has a 79 foot horizontal clearance and uses a swing mechanism, which CSXT replaced with a bascule mechanism. On Opening, SECI inadvertently excluded this bridge from its inventory. Again, CSXT has not shown whether it paid for this mechanism or whether it is currently operating (some Internet sources suggest that

a bridge tender may be on duty here but that the mechanism is operated by hand crank). However, to be conservative, SECI has included 10 percent of the cost for a motorized bascule mechanism.

Ortega River. CSXT's sixth bridge crosses the Ortega River, a small river in Jacksonville, FL, at MP 649.10. The horizontal clearance for this bridge is 40 feet. Again, CSXT has not shown that the bridge is currently operating as a movable bridge or that it incurred the costs for adding the bascule mechanism. However, SECI has determined that the bascule movement appears to be in operation. As such, to be conservative, SECI has added 10 percent of the cost of a bascule mechanism for this bridge.

Tennessee River. CSXT's seventh bridge crosses the Tennessee River at MP 123.10 near Bridgeport, AL. According to CSXT's workpapers, the bridge has a horizontal clearance of 280 feet and a vertical clearance of 59 feet when the lift is up (highwater). However, the clearances for this bridge were not found in the Coast Guard Clearance Guide. As such, SECI did not build one of its USCG standard bridges. Indeed, the vertical clearance of the bridge is low in general. However, to accommodate the clearances suggested by CSXT, SECI has included 10 percent of the vertical lift span to meet the necessary clearances. As explained below, SECI does not agree with CSXT's unit costs, which are overstated. SECI also notes that CSXT did not show that it paid for this span.

Cumberland River. CSXT's final moveable span bridge crosses the Cumberland River at MP 185.00 near Nashville, TN. According to CSXT, this is

a swing span with a 118 foot horizontal clearance, which CSXT would build as a bascule span. However, CSXT has selected the wrong bridge from the *Bridges over the Navigable Waters* book. In fact, CSXT selected a swing span bridge, owned by the R. J. Corman Railroad, many miles downriver from Nashville in Clarksville, TN, a town that the SARR does not even pass through. See CSXT Reply e-workpaper “Bridge – B.pdf.” As such, SECI has not included any additional costs for this bridge.

**(ii) Fixed Height Bridge Clearances**

In addition to the eight moveable span bridges noted above, CSXT argues that there are four additional bridges where SECI’s Type IV bridge would not meet the clearance requirements of the waterways being crossed. Two of the four bridges are on the NS-owned MGA lines, which the SFRR is not building. The remaining two bridges are discussed below.

Ohio River. The SFRR crosses the Ohio River at MP 315.00 near Henderson, KY. The Coast Guard does not list a horizontal clearance requirement for this bridge location on the Ohio River, and CSXT did not provide span data or clearance data for this bridge in discovery. Based on other USCG required clearances for river navigation of barge traffic, SECI used a 60 foot vertical clearance and a series of 145-foot Type IV spans for the main channel crossing at this location. CSXT claims that SECI’s proposed bridge height accounts for the vertical clearance, but does not account for the portion of the substructure that would be under water. SECI agrees that in this one instance the Type IV span

would not produce the required clearance, and it has added 30 feet of pier height to the main channel piers to correct this problem. See Rebuttal e-workpaper “USCG 94.pdf.” SECI calculated the additional costs by using its Opening reinforced concrete costs and increasing the volume accordingly.<sup>20</sup>

Monongahela River. The SFRR crosses the Monongahela River at MP 300 near Fairmont, WV. CSXT suggests that the horizontal clearance for this bridge would need to exceed the 145 foot maximum span for Type IV bridges utilized by SECI on Opening, citing the skew of the bridge as a factor.<sup>21</sup> Since little information about the bridge was made available during discovery, SECI’s engineers used the track charts to try to determine where bridges were located, and what the bridges were crossing. There are two bridges near MP 300: a highway overpass at approximately MP 299.9 and the Monongahela River bridge at MP 300. SECI did not initially identify this bridge as one crossing a river. On Rebuttal, SECI has remedied this by including the cost of constructing a Type IV bridge. SECI also notes that CSXT did not provide skew information in discovery, but the reported bridge length would take skew into consideration, and the Type IV span provides adequate horizontal clearance in that situation (*i.e.*,

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<sup>20</sup> CSXT constructed this bridge using the existing horizontal clearances through the main channel, which exceed 600 feet each, and which greatly increase the cost of the bridge. CSXT has not shown that horizontal clearances of this magnitude are required. Thus, SECI continues to use its 145 foot horizontal clearance standard at this location.

<sup>21</sup> On Opening, SECI’s engineers built a smaller bridge, but have revised it to reflect a Type IV bridge on Rebuttal.

additional vertical clearance should not be needed if the length is reported correctly). Thus, SECI used the reported bridge length and a vertical clearance of 50 feet (*see* Rebuttal e-workpaper “USCG 54.pdf”), which accounts for the existing clearance of 36.4 feet and the channel bottom depth of approximately 13.5 feet.

**(d) Use of an Average of 30-foot Piles**

CSXT argues that SECI’s use of an average 30-foot bridge pile for the SFRR’s bridges is inadequate in Coastal Plain and Interior Low Plateau regions. Otherwise, CSXT accepts SECI’s average pile of 30-feet.

CSXT’s modification to the average pile height is based on data it purports to have compiled showing various pile lengths used in bridge projects in the Southeast. However, CSXT has not provided any data that supports the figures from the projects, nor has it provided any calculations verifying the project information. In addition, CSXT calculated equivalent pile depths for different types of piles from the projects without considering the number of piles proposed by SECI versus the number of piles proposed by CSXT or the number of piles in the referenced project. More importantly, CSXT conveniently ignores that in many places little pile length or no piles would be required because in many locations the bedrock is located at or just below the ground surface. Indeed, SECI’s 30-foot “average” assumed that some locations would require more pile materials and some less. CSXT just skips that step and ups the pile quantities in

the two regions noted above. In addition, CSXT's bridge designs are over-engineered, as explained below, thereby increasing the pile requirements.

SECI also notes that it determined its average pile length by using a weighted average which is included as Rebuttal e-workpaper "Pile\_Lengths\_Average.xls." Pile lengths used in the calculation of the weighted average were based on lengths typical for the different geographical regions. In the southeastern United States, pile lengths generally range from 0' to 75' in length, with 0' in the hilly, rocky areas where piling is not used, up to 75' in the coastal areas where soil depths can be greater, and longer pile lengths *may* be needed to generate the proper amount of friction. The portions of the SFRR that run through the rockier territory north of Atlanta, GA, and north of Point of Rocks, MD have shallow (or visible) bedrock. Indeed, in Mr. Crouch's experience with engineering projects in GA, TN, KY, IN, SC, NC, VA, WV, MD, and PA, and based on his observations during the site visits along the SFRR route, it is not uncommon to have bridges with no pilings. *See* Rebuttal e-workpaper "Bridge Pictures.pdf."

Finally, SECI notes that it only included H-pilings for the SFRR, but the cost of an H-pile and the cost of a round friction pile (which CSXT claims is needed in the Coastal Plain Region) are very similar on a linear foot basis, and therefore a good representation of cost for the entire route. *See* Rebuttal e-workpaper "Pile Cost Comparison.xls" for cost comparisons. Thus, CSXT's claim that SECI's omission of friction piles is somehow a major design flaw is unfounded.

**(e) 90-Foot Prestressed Concrete I-Girder  
Beams and Cooper E-80 Loads**

On Opening, SECI designed its bridges to handle 286,000 lb cars. The Cooper E-80 standard is meant to accommodate 315,000 lb cars. As such, SECI's 90 foot prestressed concrete I-girder beams ("PCB"), included with Type III bridges, were not specifically tested for E-80 live load compliance, since that was not the standard that SECI's engineers were employing. Thus, CSXT's proposed fix for this alleged problem, changing the bulb tee girders and increasing the deck thickness by 3 inches, is not necessary. *See CSXT Reply at III-F-72.* Moreover, as SECI demonstrates in Rebuttal e-workpaper "Cooper E-80.pdf," the SFRR's bridges, as designed, meet Cooper E-80 standards.

**(f) Pier Cap Size**

CSXT argues that SECI's pier caps for Type II and Type III bridges would not fit. CSXT Reply at III-F-73. While CSXT makes this alleged error sound innocuous by suggesting that it merely redesigned a number of bridge elements to "fix" this problem (rather than just resizing the caps), CSXT's corrections result in drastic increases in the substructure materials thereby increasing the overall bridge substructure costs by a factor of 2.5. Regardless, CSXT's argument is incorrect.

The bearing pad dimensions that SECI used on Opening are not those cited by CSXT. Simply put, it appears that CSXT misread the plans. The bearing pads as designed by SECI's Engineers are made to fit on a 3'-0" wide cap.

However, this does not apply to the thru plate girder bearings, where caps are 7'-0" wide.

Based on the incorrect bearing pad sizes cited by CSXT, it needlessly resized and redesigned all of the bridge caps and piers. CSXT's error resulted in much larger bridge caps, pier walls, pier footings, as well as additional piling material, all of which were not necessary. The revised designs increased the volume of concrete needed for caps, pier walls, and footings by a factor of 2 to 3. SECI also notes that CSXT's pier skew of 15 degrees on all bridges also scaled up the concrete costs unnecessarily.

**(g) Step Caps**

CSXT correctly notes that SECI omitted step caps for certain bridges where varying span lengths and different superstructures might require a step cap to keep the rail at the same elevation. CSXT Reply at III-F-73. However, CSXT's step cap designs are based on CSXT's oversized substructure, which results in an overstatement of the necessary materials. SECI's engineers have added the same vertical rise used by CSXT, but sized the materials in accordance with SECI's bridges designs, *See* Rebuttal e-workpaper "Rebuttal Bridge Construction Costs.xls," tab "Step Cap Quantities."

**(h) Inadequate Bearing Pads**

CSXT argues that the elastometric bearing pads used by SECI are inadequate for Type II, III and IV bridges, and then proceeds to redesign these elements for Cooper E-80 loading standards. SECI's bearing pad design meets



the 286,000 live load requirement for which they were designed. The design also satisfies AREMA. *See* Rebuttal e-workpaper “Cooper E80.pdf” for details of the load design and AREMA specifications.

**(i) Insufficient Number of Piles**

CSXT argues that the number of piles included by SECI in its Type II, III and IV bridge designs do not meet AREMA load standards. On Opening, SECI inadvertently left out a multiplier which determines the number of rows of piles for each bridge substructure. This has been corrected on Rebuttal. SECI’s engineers further note that this calculation error is not an AREMA compliance issue, it was simply a matter of not including the proper multiplier in the calculation for pile quantities. Despite this obvious calculation error, CSXT once again tries to “fix” this alleged problem by increasing the number of piles. In turn, CSXT also increased the pier footings. SECI’s pile design meets the 286,000 live load requirement for which they were designed. The design also satisfies AREMA. *See* Rebuttal e-workpaper “Cooper E80.pdf.”

**(j) Handrails**

CSXT’s Reply Narrative omitted discussion of this item, but in its bridge calculations, CSXT added more expensive handrails. CSXT obtained “budget pricing” for a steel angle and cable handrail, and a very expensive steel pipe railing system (one not often found on CSXT existing structures). CSXT then proceeded to average the steel angle and cable handrail with the pipe handrail in order to create an average handrail pricing almost three times higher than what

was proposed by SECI on Opening. The price difference between the CSXT typical steel angle and cable rail versus the expensive atypical pipe handrail is a factor of four based on the “budget pricing” provided by CSXT. *See* CSXT Reply e-workpapers “Fenton Rigging & Contracting Bid Sheet.pdf,” “Scott Bridge Bid Sheet.pdf,” and “Handrailing – Estimated Costs.pdf.” On Opening, SECI included handrails on one side of each bridge despite the fact that many CSXT bridges have no handrails. *See, e.g.*, Opening e-workpapers “IMG\_0001.jpg,” “IMG\_0062.jpg,” “IMG\_0181.jpg,” and “IMG\_0213.jpg.”

**(k) Deck Expansion Plates and Diaphragms**

CSXT’s Reply Narrative omitted discussion of this item, but in its workpapers CSXT added costs for expansion plates and diaphragms. These additions were unnecessary. Diaphragms are included in the cost per linear foot for each prestressed beam. *See* Opening e-workpaper “Bridge Construction Costs.xls,” tab “Superstructure.” Expansion plates are included in the unit cost for constructing a complete deck. *Id.*

**(l) Bridge Drainage**

In the unit cost section of its bridge evidence, CSXT argues that the bridge drainage included by SECI is inadequate. CSXT Reply at III-F-81. As this is a design issue, SECI addresses it here. CSXT assumed that SECI included a one-inch PVC pipe running the length of the bridge. Deciding that was inadequate, and without any explanation, CSXT added a six-inch pipe enclosed in geotextiles. *Id.* CSXT is incorrect with respect to SECI’s design. SECI’s design

includes a series of one inch pipes placed perpendicular to the bridge, not parallel.

*See* Opening e-workpaper “BR39-Greene Contractors-PVC Deck Drain.pdf.”

This discharges the water to the side. In addition, the decks are sloped to aid drainage. This design is in common use. As such, CSXT’s redesign is unnecessary.

**(m) Waterproofing**

CSXT’s bridge unit costs include waterproofing for all structures.

*See* CSXT Reply at III-F-80. As this is a design element, SECI addresses this issue here. Waterproofing is not required. Indeed, AREMA states that

“Waterproofing, *if any*, shall be provided in accordance with Part 29,

Waterproofing, *or as specified by the Engineer*. *See* Rebuttal e-workpaper

”AREMA\_Waterproofing.pdf” (emphasis added). Moreover, CSXT has not demonstrated that it has waterproofed any of the bridges being replicated. As such, SECI has continued to exclude this cost.

**(n) Calculation Corrections**

CSXT noted that SECI used a 190 foot span instead of a 90 foot span when calculating costs for Type III bridges. *See* CSXT Reply at III-F-65.

SECI agrees, and has corrected this error on Rebuttal.

SECI inadvertently failed to multiply the quantity of pilings and pile tips at certain abutments by two. Likewise, SECI inadvertently excluded elastomeric pads from Type I bridges. These omissions have been corrected on Rebuttal.

**c. Bridge Costs**

On Opening, SECI included bridge unit costs that were derived from real-world bridge projects designed, bid out and overseen by Crouch Engineering. CSXT's criticisms with respect to SECI's unit costs are similar to its complaints about using unit costs from the Trestle Hollow Project. They range from the now-tired complaint of "cherry picking" to the projects being "provincial" and "not representative." To remedy these perceived inadequacies, CSXT resorts to using Means for many unit costs or averaging of the unit costs from the Crouch Engineering projects with some "budget number quotes" obtained by CSXT.

The Board has rejected CSXT's approach. It is well established that the Complainant shipper is entitled under *Coal Rate Guidelines* to use the least cost option(s) provided it is feasible. *See, e.g., Duke/CSXT* at 489 (shipper can use the lower of two prices for rail even if one supplier is smaller than another) and *WFA/Basin* (BNSF complained of cherry picking, but the Board accepted the shipper's unit costs). SECI's unit costs are derived from actual projects and incorporate all of the different materials specified by SECI's engineering experts. Consequently, SECI's unit costs are feasible, and appropriate for the bridge span types being built on the SFRR.

SECI also takes issue with the unit costs that CSXT utilized for working in so-called "Big Water" areas (*i.e.*, the Ohio and Monongahela Rivers). Simply put, CSXT figures are grossly overstated and completely inapplicable to the SFRR's bridges. In particular, CSXT relies on information provided by two

contractors. Fenton Rigging using budget pricing, and Scott Bridge using “rate case” project prices. See CSXT Reply e-workpapers “Fenton Rigging & Contracting Bid Sheet.pdf” and “Scott Bridge Bid Sheet.pdf.” CSXT’s highly inflated unit costs vary even between the contractors from a factor of 1.5 all the way up to a factor of 2.7 on the installation of the CSXT’s proposed pilings.

CSXT has not only proposed construction costs for the Ohio River and Monongahela River bridges that are unsupported, but by redesigning the Type IV spans that SECI proposed, which do meet USCG minimum clearance requirements, CSXT has replaced an economical span length with enormous and overpriced span structures that are “gold-plated.” Indeed, by increasing the span lengths on these bridges, CSXT took the liberty to redesign the entire substructure thereby creating a scenario where the pier loads are up by a factor of 4.6 compared to the designs that SECI used. In other words, CSXT costs for these two bridges cannot be supported and are unrealistic based on the large variances found in the “budget pricing” CSXT provided on Reply, as well as the unnecessary modifications to SECI’s Type IV bridge design.

CSXT also has several specific unit cost complaints that that SECI addresses below.

**i. Bridges over Major Waterways**

As explained above there are two fixed bridges crossing major waterways that the SFRR is building. CSXT argues that SECI’s unit costs cannot be used for these locations due to differing requirements from the SECI’s standard

Type IV bridge. Each of the individual bridge designs and related costs are addressed above.

**ii. Moveable Spans**

SECI agrees that five moveable span bridges would be required on the SFRR. However, as explained above, such moveable spans are generally not paid for by the railroad when they are installed over navigable waterways, and CSXT failed to show that it paid for these spans. Indeed, the projects that CSXT used for its unit costs were all government funded. *See* CSXT Reply e-workpaper “Bridge - D.pdf.” However, to be conservative, and consistent with the approach used for overhead bridges, SECI has included 10 percent of the cost of building the moveable structure; except SECI takes issue with CSXT’s unit costs for moveable spans.

CSXT suggests that its engineers consulted data from moveable bridge construction contracts and that these contracts were averaged to arrive at linear cost per foot. CSXT Reply at III-F-80. However, CSXT did not provide any contracts in its workpapers. Instead, CSXT provided a workpaper that includes summary data from the Coast Guard about certain projects paid for by the Coast Guard. *See* Reply e-workpaper “Bridge – D.pdf.” In addition, the workpaper includes summary data from a Canadian Pacific project that was also paid for the by the Coast Guard. As discussed below, this data grossly overstates the costs for such projects, and CSXT failed to account for the fact that these projects were all built under rail traffic and that each involved complex demolition

issues – costs that would not be incurred when constructing a new bridge offline (that is, without having to account for existing rail traffic movements).

**(a) Bascule Brides**

Five of the six movable bridges have bascule bridges. For its cost per linear foot, CSXT's engineers relied on only one project undertaken by CP and paid for by the Coast Guard. This project involved the replacement of a 147-foot swing span with a bascule lift span. According to reports from the local newspaper, the replacement of the swing span was part of a \$16 million project to improve CP's crossing of the Black River at La Crosse, WI. *See* Rebuttal e-workpaper "CP Bridge Article.pdf." It is unclear whether the costs were for replacing the swing span only or whether it included other portions of the 887-foot bridge, or other non-related items. Regardless, the article makes clear that the old piers had to be demolished by use of explosives – a complicated and expensive task. Moreover, other modifications to accommodate the new mechanism had to have been included in the bridge cost, otherwise it would not have been possible to bring in the new span. CSXT's addition of 50 feet to each of the SFRR's bascule spans is unwarranted since the costs already incorporate necessary changes to adjacent structures.

Despite the lack of information underlying these costs, and the other complications described above, CSXT then took this one project cost of \$16 million, indexed that cost, and divided it by 147 to arrive at linear cost per foot of \$140,807.33. *See* CSXT Reply e-workpaper "Bridge – D.pdf." This unit cost is

simply unsupportable. CSXT has not demonstrated what the cost to add this span would have been if it not built under traffic and if it had not involved complicated demolition of at least part of the old bridge structure.

Adding to CSXT error, the same Reply e-workpaper “Bridge – D.pdf” includes a summary of a CSXT project in Pascagoula, MS where, according to the Coast Guard, a completely new 775-foot bridge was constructed offline. This bridge included a 170-foot bascule span (140 feet of horizontal clearance). It was built in 1994 at a cost of \$8,336,800 for the entire structure. Making a generous assumption that 75 percent of the total cost of the bridge was attributable to the bascule span, the indexed cost per linear foot would be \$65,492. *See* Rebuttal e-workpaper “Rebuttal Bridge Construction Costs.xls,” tab “Special Bridges.” For that matter, if we assume that the bascule span represented the entire cost of the new bridge, the indexed cost per linear foot would be \$87,323. *Id.* Simply put, CSXT’s cost per linear foot for bascule spans overstates by a factor of more than two any reasonable cost for a such a bridge when constructed offline. Thus, on Rebuttal, SECI uses a \$65,492 cost per linear foot.

**(b) Vertical Lift Bridge**

One moveable span bridge on the SFRR uses a vertical lift mechanism. As with the bascule bridge unit costs, CSXT appears to have overstated the costs per linear foot. To develop its linear foot cost, CSXT used two vertical lift project summaries provided by the Coast Guard. The first project, also funded by the Coast Guard, is for a BNSF bridge over the Upper Mississippi



River, where a vertical lift was being expanded to 356 feet wide (305-foot horizontal clearance). The vertical clearance was set to 60 feet. However, CSXT's use of this bridge is suspect because it is a two-track bridge. In addition, it includes demolition costs and the new span was constructed under traffic. See Rebuttal e-workpaper "BNSF Mississippi River Bridge.pdf."

The other project that CSXT relies on is a bridge on the EJ&E (now CN) which crosses the Illinois River near Devine, IL. The new vertical lift is replacing a lift with a 120 foot horizontal clearance and expanding it to 300 feet of horizontal clearance. The vertical clearance will stay at 56 feet. Again, this Coast Guard-funded project involves demolishing an existing span and modifications to surrounding spans while operating under traffic. CSXT's estimate of the cost per linear foot (total cost/span length) is \$122,857. Again this estimate appears to be overstated in light of the cost difference shown when constructing moveable bridges offline (*see* the bascule example above where the online construction cost was more than double the cost of a bridge constructed offline). Assuming that the offline construction cost would be approximately half the cost of altering an existing structure, the cost per linear foot would equal \$61,429 per linear foot. To be conservative, on Rebuttal SECI has increased the cost per linear foot to the same as that used for bascule bridges.<sup>22</sup>

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<sup>22</sup> This approach is reasonable insofar as CSXT cost per linear foot was similar for bascule (\$140,807) and vertical lift bridges (\$145,227).

**iii. Miscellaneous Items**

CSXT included costs for silt fences. Silt fences represent an environmental control mechanism that was not used until recent environmental laws were enacted, and then became an element of permitting for such projects. Moreover, CSXT has not shown that it constructed such fences when the bridges were installed. As such, SECI has excluded such fences as a barrier to entry.

CSXT has also included rip-rap for the SFRR's bridges. Rip-rap is already accounted for in the ICC Engineering Reports and included in the earthwork calculation in Part III-F-2. Moreover, many of CSXT's bridges do not include rip-rap. *See* Rebuttal e-workpaper "Bridge Photos.pdf." As such, SECI has not included additional rip-rap.

**d. Summary**

Despite the additions that SECI has made to its bridge quantities on Rebuttal, the correction to the 90-foot Type III span calculation resulted in SECI's total bridge costs declining from \$819.1 million on Opening to \$591.4 on Rebuttal.

**6. Signals and Communications**

On Opening, SECI's signals and communications expert, Victor Grappone, included signal and microwave tower communications systems designed to accommodate the SFRR's needs. In general, CSXT accepts Mr. Grappone's approach, except in certain areas it disagrees with the unit costs, unit counts, and the methodology Mr. Grappone used. Despite its broad acceptance of

SECI's Opening approach, CSXT suggests that there are serious flaws and omissions in SECI's Opening evidence. CSXT Reply at III-F-83. As shown below, there are only minor differences between the parties in terms of the methodology employed, and most of the cost differences are attributable to a few items where CSXT either raised the unit costs, or SECI inadvertently omitted a cost. These issues are addressed below.

**a. Centralized Traffic Control**

Before turning to the individual items at issue, SECI notes that CSXT suggests that SECI did not include any supporting schematic for its CTC signal system. *See* CSXT Reply at III-F-87. Yet on that same page, CSXT notes that it reviewed just such a schematic. CSXT even marked up the diagram in its Reply e-workpaper "Reviewed C-S Straight Line 12-09.pdf." As such, this criticism is unfounded.

**i. Equipment Counts**

CSXT notes that SECI omitted several FED and AEI scanners from its Opening costs. In addition, in certain cases the final signal counts did not agree with SECI's track diagrams in Opening Exhibit III-B-3. SECI has corrected its counts on Rebuttal.

**ii. Insulated Joints**

CSXT asserts that SECI's use of intelligent track circuits without insulated joints does not meet accepted industry practice. SECI agrees that insulated joints are needed at turnout and certain automatic signal locations.

SECI's intelligent track circuit technology was meant to be used at road crossings and similar facilities, which CSXT did not object to. SECI's powered turnouts already include insulated joints, but SECI has added them at automatic signal locations where necessary.

**iii. Switch Machines**

On Opening, SECI developed power turnout costs that were based on a quote provided by a vendor. The Opening quote request was supposed to include the necessary switch machine. However, CSXT argued the switch machines were not included, although it did not explain its assumption. In any event, in light of CSXT's assertion, SECI's engineers went back to the vendor and was informed that the switch mechanism is not included, although insulated joints were included. To remedy this omission, Mr. Grappone has added switch mechanisms and utilized CSXT's Reply unit cost for these devices.

**iv. Commercial Power Drops**

On Opening, SECI assumed that commercial power would be available near signal control points. However, to ensure such connectivity, SECI included more than 500 feet of power cable at each location to reach the power facilities, except for CP1 (one switch, three signals) control points where less than 500 feet was used. CSXT apparently overlooked the addition of this cable by SECI because it added 500 feet for such connections, thereby double counting this item. SECI continues to use its opening length of cable, and it has increased the cable length to 500 feet for CP1 locations.

CSXT suggests that SECI's reliance on solar power for AEI readers, FEDs, and road crossing is misplaced since SECI's solar units cannot match the variations in the electrical current need for the different devices. CSXT also argues that the unit costs are too low. As commercial power is a better alternative where available, SECI has accepted CSXT's proposal to use commercial power drops at these locations.

**v. CTC Office Equipment**

On Opening, SECI assumed that the CTC office equipment would cost \$1 million, which SECI indexed. This cost was based on a rough estimate from Alstom provided to SECI's IT witness some years ago. Today, however, Alstom (which is a major supplier to the railroad industry) will not provide quotes to the shipper community. As such, SECI had no practical way to determine how such pricing may have changed or whether the initial estimate was accurate, other than to index it. On Reply, CSXT obtained an estimate from Alstom that totaled \$2.5 million, including a \$500,000 backup location. SECI accepts this revised cost.

**vi. Turnouts for Customer Locations**

CSXT included manual switch mechanisms and electric locks for the turnouts to the 884 customer locations it argues that the SFRR must build. As explained in Part III-B-2 SECI only requires 96 such locations, 28 of which were already provided for on Opening. Accordingly, on Rebuttal SECI provides for manual switch mechanisms and electric locks at 68 additional locations. In order

to capture these costs, SECI has included a new typical installation in its revised rebuttal e-workpaper spreadsheet called “EL1.” The former “EL,” which is applied at defective equipment tracks with two switches, has been renamed “EL2.”

**vii. Unit Costs**

In its electronic workpapers, but without discussion in its Reply Narrative, CSXT changed several unit costs that SECI utilized on Opening, resulting in significantly higher signal costs. In particular, CSXT modified the unit costs for: double track highway crossing predictor huts; single track highway crossing predictor huts; signals, two head (three aspects each), with mast, platform and foundation; and signals, one head (three aspects), with mast, platform and foundation. These costs were based on quotes that Mr. Grappone received from GE Transportation Systems Global Signaling and Safetran. SECI’s lower opening unit costs thus are supported by actual quotes from vendors, and CSXT has not explained why they are not feasible or the basis for its higher unit costs. SECI thus has continued to use its Opening costs for these items.

**viii. Signals & Communications Testing Equipment**

Without explanation, CSXT included costs for signals and communications testing equipment. SECI has already included labor costs for installation of such equipment. Any signals contractor should have the necessary equipment to install and test such mechanisms. As far as ongoing maintenance, the potential costs for small tools of this kind are already included in the small

tools additive for each signal maintainer. Thus, SECI is not including the additional costs proposed by CSXT.

**ix. Design Differences**

In some cases, CSXT modified the interlocking type from what SECI used on Opening, but no explanations for the modifications were provided. These difference boil down to the particular engineer's preference on how to handle a given location. As such, SECI continued to use its Opening specifications.

**x. PTC**

At III-C-88 of its Reply Narrative CSXT notes that it developed PTC costs, as discussed in its Reply Part III-C. Per SECI's Rebuttal discussion in Part III-C-3, SECI is not including PTC costs. SECI also notes that CSXT's PTC costs are not included in the signals costs presented in its Reply Evidence. Rather, CSXT included these costs as an add-on to its Reply DCF spreadsheet, "Exhibit III-H-1 Reply.xls."

**b. Communications**

CSXT accepted SECI's communications unit costs, except that it added communications testing tools which are unnecessary as explained above. Therefore, SECI continues to use its Opening communications unit costs.

Without explanation, CSXT modified some of SECI's counts for communications devices, including an additional microwave tower. As CSXT has

not explained these modifications or demonstrated why SECI's communications device counts are inadequate, SECI continues to use its opening counts.

Due to the increase in electric lock requirements and the inclusion of switch machines, SECI's signals and communications costs have risen from \$227.0 million on Opening to \$271.1 million on Rebuttal.

## **7. Buildings and Facilities**

SECI's major facilities were detailed in its Opening Part III-F-7. Briefly summarized, SECI included four major yard facilities, a headquarters building, one large locomotive shop and three smaller shops used for running repairs. In addition, SECI included crew and MOW buildings and various other facilities as required.

CSXT's Reply buildings and facilities costs are much higher than those developed by SECI on Opening. There are two factors driving CSXT's overstated costs. First, CSXT's engineers changed the design of virtually every building on the SFRR. The second factor is that CSXT appears to have ignored the unit costs developed by SECI and simply replaced them with what appear be Means Handbook costs, although CSXT never cites any particular sources for its costs.<sup>23</sup> Adding to the confusion, CSXT indexed all of its costs from 2Q08, the historical time period that SECI was using because its building costs were from that time period, but CSXT did not even establish that its costs required indexing.

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<sup>23</sup> While CSXT proposed a myriad of new and expanded yard facilities, CSXT has not provided any additional building and facilities for these yards, except it appears that CSXT may have provided office space for car inspectors.



For these reasons, on Rebuttal SECI's engineers have continued to utilize the core buildings and facilities that were specified on Opening. CSXT's specific criticisms of those facilities are addressed below.

**a. Headquarters Building**

On Opening, SECI specified a 40,000 square foot building to house the headquarters personnel and facilities. CSXT accepts the square footage specified by SECI, but it argues that SECI's building is only 20,000 square feet plus a basement of equivalent size, and that the SFRR requires 40,000 square feet above ground in accordance with Means. CSXT's criticism is incorrect.

On Opening, SECI's engineers used the current Means costing software program, which is the company's state-of-the-art online costing tool. The new Means Program (which obviously uses Means standards) *did* multiply the 20,000 square feet by the second story so the total cost would be based on the listed gross square footage of 40,000 square feet, per SECI's Opening specification.

CSXT also argues that SECI excluded window treatments, an emergency generator, utility connections and a paging system for the building. CSXT is incorrect. SECI's costs included an emergency generator. This item was included under "D5090 Other Electrical equipment," and it includes the following description: "Generator sets, w/battery, charger, muffler and transfer switch, gas/gasoline operated, 3 phase, 4 wire, 277/480 V, 7.5 kW Uninterruptible power supply with standard battery pack, 15 kVA/12.75 kW" at \$4,500 based on the SF

cost of 0.22 cents per SF. *See* Opening e-workpaper “Headquarters Personnel.xls.” Item D5930 includes the cost for communication systems, fire detection and related alarm (with 50 detectors). *Id.* SECI also included utility connections. In particular, line item D5010 covers electrical service and distribution facilities, including facilities to wire up 1,000 amp service to the building. As for window treatments, such furnishings are not typically used in railroad buildings.

CSXT also complains that SECI used mercury vapor light fixtures in the parking lot of the headquarters, which it claims are unsafe, and instead used low-pressure sodium fixtures. CSXT has not explained why mercury vapor lights are unsafe, and Crouch Engineering has used mercury vapor lights for its railroads clients, including the NS, on actual projects. Indeed, Mr. Crouch notes that NS, for one, prefers mercury vapor because it tends to reduce the contrast between lit and shadowed areas. Moreover, CSXT itself uses mercury vapor lights. *See* Rebuttal e-workpaper “Lighting.pdf.” Consequently, SECI continues to use its Opening lighting fixtures on Rebuttal.

**b. Fueling Facilities**

**i. Fueling by Truck**

On Opening, SECI did not include any fixed fueling facilities. Instead, DTL fueling (fueling by tanker truck) was used in the SFRR’s yard facilities. CSXT accepts this approach. CSXT Reply at III-F-91. However, CSXT added costs for access roads for the trucks to reach the facilities. *Id.*

CSXT's addition of access roads is unnecessary because SECI provided access roads on Opening. *See* Opening e-workpaper "Facilities Cost.xls" (each yard facility includes the material for a road in the first three rows of cost data).

**c. Locomotive Shop**

On Opening, SECI based its locomotive shops (one main facility and three smaller facilities) on actual maintenance facilities designed by Crouch Engineering, which are in use today. *See* Rebuttal e-workpaper "Other Locomotive Shops.pdf." SECI then added a very generous \$100 per square foot to each facility to account for various machines and appurtenances that may be needed – this works out to \$4.2 million in the Folkston shop (considerably more than Crouch Engineering has needed for other real-world shops it has built). *Id.* In addition, the main locomotive shop at Folkston was sized to handle the SFRR's Opening locomotive counts, 164 road locomotives and 8 switching locomotives.<sup>24</sup> Notwithstanding the basic building design that is in use today, CSXT argues that certain elements of the main locomotive shop and the three other shops are insufficient.

First, CSXT argues that the eave height in the Folkston locomotive shop is not sufficient because there would not be adequate clearance to move power assemblies over the top of the unit hoods with a jib or bridge crane, and, therefore, CSXT increased the height from 21'-9" to 34'. *See* CSXT Reply at III-F-

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<sup>24</sup> SECI's Rebuttal road locomotive count is 161 road and 10 switching locomotives. Thus, the locomotive shops do not need to be altered.

91. CSXT is incorrect. In order to obtain the required operational clearances with a crane and its hook, several factors need to be considered: the depth of the steel beam; the slope of the roof; the crane size and design; and the location of the crane. The SFRR's locomotive shop uses a roof slope of 1/2:12. So while the eave height is 21'-9', the actual interior roof height can vary. Regardless, the basic design is adequate as demonstrated in SECI's Rebuttal e-workpaper "Shop Height and Clearance.pdf." In addition, the shop includes a transfer table, which can be used in lieu of a crane. Moreover, SECI's locomotive shop was not intended to handle the infrequent and specialized work of engine replacements. Such repairs, should they even be needed, would be handled at a specialized shop.

CSXT also resized the Folkston shop to accommodate its Reply count of 225 locomotives. As SECI's Opening locomotive counts have not increased on rebuttal, SECI has not changed the shop size.

CSXT, without explanation, also increased the size of the three smaller locomotive shops by a factor of 2.5. These shops are only performing 92-day inspections and minor running repairs. There is no heavy work being performed at these locations and CSXT has not provided any evidence why additional space would be need. Moreover, as SECI's locomotive requirements have not changed significantly, SECI has not expanded the shop size for the three smaller locations.

CSXT also indicated that it could not determine if SECI added locomotive wash facilities, and, therefore, CSXT added very costly wash facilities

ate each shop. SECI did include locomotive wash facilities. The costs for a wash facility, listed as “25'x60' Wash bay,” are included at each of the four yards where SECI has a locomotive shop. *See* Opening e-workpaper “Facilities Costs.xls.” In addition, SECI’s engineers included a drawing of the facility. *See* Opening e-workpaper “FA04-Wash Pad.pdf.”

CSXT also adds a variety of other items to the locomotive shop costs, which it claims the SFRR needs, such as a pump house, pipe racks, a storage tank containment structure, a wastewater pretreatment building, and a pressure combined wastewater sewer line. These items are not needed or are already accounted for in SECI’s shop costs. The first three items are only required when using very large external storage tanks. However, SECI’s specs assumed smaller indoor storage tanks that are more appropriately sized for the need of the SFRR’s shops. For example, CSXT included 20,000 gallon lube oil tanks at every shop. SECI’s engineers have built several locomotive shops that accommodate similar volumes of locomotives, but they have never required a tank anywhere close to that size. For shops sized to handle around 18 locomotives, it is not necessary to store oils and chemicals in huge tanks. Instead the materials can be stored in drums and smaller portable tanks, which are usually provided by the locomotive maintenance contractor. This approach was used by Crouch Engineering in a shop it designed for the South Carolina Central Railroad. Finally, the sewer facilities have already been accounted for in SECI’s yard site costs, which include costs for oil/water separators, effluent pits, *etc.*

CSXT further added outside tracks and concrete walkways for the locomotive facilities. CSXT has not explained why these additional walkways and tracks are necessary other than to suggest a staging area and a place to perform locomotive load tests. There is ample room for this in the locomotive shops, and there is no reason to add costly concrete walkways since no inspections will be performed outside.

CSXT also alters the locomotive shop lighting from mercury vapor to low pressure sodium. For the reasons explained with respect to the headquarters building, SECI continues to use the mercury vapor lighting.

The above items respond to specific criticisms that CSXT made of SECI's locomotive shops. What CSXT does not explain is the sky-high locomotive shop costs that it has included on Reply. Before turning to the individual problems with CSXT's revised costs, SECI notes that CSXT did not include any shop drawings nor did it provide any support for its completely new unit costs. Thus, SECI's engineers were unable to examine all the potential issues in CSXT's revised "design." However, as explained below, CSXT has "gold plated" these shop facilities.

- CSXT's shell building cost is more than double SECI's, but CSXT provides no explanation for why its costs are so high.
- CSXT includes a 20,000 gallon lube oil tank at all shops.
- CSXT includes a 10,000 gallon journal oil tank at all shops.
- CSXT includes a 10,000 gallon chemical storage tank at all shops.

- CSXT includes a 10,000 gallon locomotive air compressor lubricating oil storage tank at all shops.
- CSXT includes a 10,000 gallon soap storage tank at all shops.
- CSXT includes a 10,000 gallon journal oil tank at all shops.
- CSXT includes over \$170,000 for pumps and facilities to feed the soap from the storage tank (*i.e.*, a \$170,000 soap dispenser)
- CSXT's office and warehouse facilities, besides being oversized, are all built with 34' foot eaves. At that height, three stories of offices would fit inside. Plainly these facilities are overdesigned.
- CSXT includes basement excavation for the facilities, but these buildings do not need basements. The basement walls are also 10 inches thick.
- CSXT includes poured concrete inspection facilities, when metal structures are suitable and far cheaper.
- CSXT's locomotive wash is much bigger than necessary, and it has basement walls as well.
- The office area for the main shop includes 11 toilets and four showers.
- All of the small shops include wheel truing machines.
- All of the small shops include a 3-ton bridge crane *and* a 10-ton bridge crane.

The above, represent just some of the excesses of CSXT's locomotive shops. SECI has, therefore, continued to use its Opening locomotive shop costs.

**d. Car Repair Shop**

The parties agree that the SFRR does not need to build a car repair shop.

**e. Crew Change Facilities and Yard Offices**

SECI's Opening crew change and yard office facilities were simple buildings designed to meet the basic functions they perform. In each case, SECI provided 1,400 feet of space that included restrooms, work areas and lockers as well as an overhead door where supplies could be brought in if needed. CSXT argues that SECI's designs are inadequate and it added 700 additional square feet to each building. CSXT's additions and criticisms are unfounded.

CSXT argues that the two restrooms included by SECI do not meet ADA standards. CSXT is technically correct because the bathrooms are slightly undersized, but this is easily corrected with a minor reconfiguration – 700 additional square feet are not needed.

CSXT suggests that two office spaces are needed. CSXT does not explain why separate offices are needed in these facilities. There is ample space for desks and tables – an office may be a luxury, but not a necessity here.

CSXT argues for a separate work room. Again there is ample work space without creating a separate work room.

CSXT argues for a separate storage room. SECI already provided storage space near the overhead door.



CSXT argues for another restroom where drug tests could be performed, and, when not serving this purpose, it would act as a women's restroom. SECI's has already provided two separate restrooms. A third restroom is not needed.

CSXT also argues for a unisex shower. These are crew change buildings and yard offices, not gymnasiums. Showers can be taken at home.

CSXT argues for a separate room for HVAC and mechanical equipment. CSXT's existing buildings show that such facilities can be placed outside, and, in any event, there is ample room in the space with the overhead door.

CSXT argues for a telecomm equipment room. Again, a separate room for the minimal amount of telecom equipment is not necessary at location.

CSXT also added costs for utility connections. SECI already included these costs. *See* Opening e-workpaper "Facilities Costs.xls."

CSXT also changed the lights from mercury vapor to low pressure sodium, a modification that SECI has already explained is not necessary.

CSXT also added multiple yard office buildings in some locations with no explanation for why these additional facilities were needed.

CSXT also develops all new unit costs for these buildings. CSXT provided no support for its revised costs nor has it explained why SECI's costs are infeasible. Moreover, the buildings are, again, gold plated. They include basements, which are unnecessary, and excessive eave heights.

Thus, SECI has continued to use its Opening crew change and yard office costs and designs.

**f. Maintenance of Way Buildings (Roadway Buildings)**

On Opening, SECI included MOW buildings with basic facilities for the work crew and a small garage to store materials and occasionally vehicles as needed. CSXT adds 734 square feet to account for the items it claims was missing from the crew change buildings. CSXT also adds another 1,350 square foot garage to each location, and an 8,000 square foot fenced storage yard.

CSXT's space additions are unneeded for the same reasons described above with respect to crew change buildings. As for the extra garage and outdoor storage space, this is another example of gold plating. Most MOW facilities have no garage space at all. In Mr. Crouch's experience, working at and designing such facilities, many do not even have a covered space for equipment let alone an 8,000 square foot fenced storage yard. SECI has not included these additional items on Rebuttal.

**g. Wastewater Treatment**

The parties agree that wastewater treatment would be handled through local sewer connections.

**h. Yard Air and Yard Lighting**

The parties agree on the costs for yard air. CSXT proposes changing the light fixtures from mercury vapor to low pressure sodium. For the reasons described above, SECI continues to use mercury vapor lights.

**i. Intermodal Terminals**

On Opening, SECI did not include intermodal terminal facilities, but as explained in Parts III-B and III-C, SECI agrees that intermodal yard facilities are required at five locations. However, CSXT's site costs for these facilities are grossly overstated. For each facility, CSXT has included \$4.4 million in site costs. Of the \$4.4 million, \$3.5 million alone is for lights. SECI discusses the problems with CSXT's costs below, and it makes necessary adjustments to the costs.

At each intermodal facility, CSXT includes 38 "high mast lights" at a cost of \$90,000 each. CSXT has provided no support for its very high costs (10 times what it assumed for lights elsewhere, which are also overpriced and undocumented). CSXT also claims that 2 candle feet of lighting are required, but it provided no backup support for this standard, nor did it demonstrate its applicability to these facilities, or provide any calculations that indicate whether its proposed lights meets or exceeds this supposed standard. In addition, CSXT has not shown that its own lighting for such facilities covers the entire area of the tracks, nor has CSXT demonstrated that the high mast lights are needed in this application. In addition, SECI's has already shown that CSXT regularly uses mercury vapor light in its yards. As such, SECI has included its standard mercury vapor lights in these facilities. *See* Rebuttal e-workpaper "NS Memphis Intermodal.pdf" (pictures show mercury vapor lights on standard light poles).

CSXT also adds 25,000 linear feet of security fence. Again, CSXT provides no explanation for its calculations. SECI's engineers assumed that CSXT

intended to enclose the entire facility because it added sliding gates for the railcars. This degree of fencing is unnecessary. Typically the rail elements of the facility are not fenced. Instead, the area accessible from the road is usually fenced, if fencing is used at all. See Rebuttal e-workpaper “NS Memphis Intermodal.pdf,” showing no fencing between the main road and the intermodal yard (mercury vapor lights are also shown). Thus, SECI’s experts included enough fencing to enclose the road access and a reasonable area running parallel to the guard gate. SECI agrees with CSXT that a guard house and guard gate is necessary, but CSXT has not explained why two truck gates are necessary. As such, SECI has included one guard house and one moveable gate for truck access.

**j. Transflo Facilities**

On Opening, SECI did not include Transflo facilities. As explained in Parts III-B and III-C, SECI agrees that small Transflo facilities are required at ten locations. As with its intermodal facilities, CSXT overstated the site costs for these facilities. Each of these locations includes only 0.24 miles of track, but CSXT includes \$1.9 million in site costs for each location. More than half of the costs are attributable to CSXT’s overpriced lighting of \$1.1 million (12 high mast light towers at \$90,000 each). CSXT also adds security fencing and gates around the entire facility. Fencing is not needed here. Transflo facilities are used to transfer bulk commodities and other items like plastic pellets from railcars to trucks. These are not the sort of items that require protection from theft. CSXT also includes two buildings at each location, one office and one maintenance

building. CSXT has not explained why more than one building is needed here. Moreover, CSXT's building costs are overstated and unexplained. As such, SECI has used its standard lighting package at these facilities, and it has included the cost for its standard yard office at each location.

**k. Car/Train Inspector Facilities**

CSXT adds 18 car/train inspection facilities to the SFRR. Although not explained, SECI's engineers assumed that this addition is linked to CSXT's increase in the number of yards, which in turn increased its number of inspectors and inspector locations. As explained in Part III-C, these additional inspection locations are not needed. As for the four locations where the SFRR does have inspectors, SECI already has yard offices at all of these locations. Consequently, additional facilities are not needed.

Due to the addition of intermodal and Transflo facilities, SECI's buildings and facilities costs have increased from \$32.1 million on Opening to \$35.4 million on Rebuttal.

**8. Public Improvements**

While public improvements are discussed in detail below, most of the costs for such items are included in other investment categories, such as track construction, bridges and signals. In general, the parties agree on the costs and quantities for various public improvement items. There are some minor differences, which are addressed below.

**a. Fences**

On Opening, SECI included fencing for its yards. Fencing was not used on other portions of the SFRR. CSXT accepts SECI fencing quantities in general, but it added additional fencing for microwave tower sites, intermodal facilities, and Transflo facilities. SECI accepts the addition of fencing for the microwave tower sites. Fencing for intermodal and Transflo facilities are addressed above in Part III-F-7.

**b. Signs and Road Crossing Devices**

The parties generally agree on the signs to be included. However, CSXT added one more category of signs, emergency notification signs at railroad crossings, which include an “800” number to call in case of emergency. The emergency notification signs are part of a voluntary program being sponsored by the FRA. As such, SECI has continued to exclude these signs. SECI also notes that CSXT’s costs for the signs are overstated because they include a separate sign pole and installation cost. Typically these signs are attached to nearby wood poles rather than placed on separate poles.

**c. Grade-Separated and At-Grade Crossings**

The parties agree on the quantities of at-grade crossings and related crossing materials.<sup>25</sup> CSXT also accepted the unit cost that SECI used on Opening, but it claims it added costs for roadway detours and related signage.

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<sup>25</sup> In Part III-D of its Rebuttal Narrative, CSXT suggests that it has modified the road crossing material quantities, but it did not make such a modification in its road property investment spreadsheets.

However, SECI's examination of CSXT's Reply grade crossing costs shows that CSXT did not make any modification to the unit costs. Moreover, SECI's Opening unit cost of \$543.96 already included the costs for these activities since it was based on bids that included construction costs in the \$345 per foot range, to which SECI added additional costs per foot to cover other activities.

Graded-separated crossings are addressed in Part III-F-5.

**9. Mobilization**

On Opening, SECI's engineers added a 2.7 percent mobilization factor for all items where mobilization is not already included in the contractor's bid. This mobilization additive was the same as the additive the Board accepted in *Duke/CSXT* at 507. On Reply, CSXT suggests that the *Duke/CSXT* additive was based on a special study that was not performed in this case, and it then adopts a 3.5 percent mobilization additive citing *Simplified Standards for Rail Rate Cases* (which used the mobilization costs from *PSCo/Xcel*). CSXT's arguments are incorrect, and its use of a 3.5 percent additive is not warranted here.

CSXT claims that the 2.7% mobilization factor "was built up based on a detailed analysis of the mobilization costs for each major asset category." In fact, all that happened in the *Duke/CSXT* case was that the parties sparred over whether to include demobilization costs and whether certain categories of construction should have a higher or lower mobilization additive – there was no special study conducted. In the end, the Board accepted CSXT's higher mobilization costs additive of 2.7 percent, which CSXT now complains about. In

addition, the Board also found that CSXT's mobilization factor was in line with previous decisions in *TMPA* (2.0 percent mobilization factor); *PPL Montana* (2.2 percent); *Wisconsin P&L* (2.6 percent); and *FMC* (2.4 percent).

SECI submits that the 2.7 percent additive is feasible because it is higher than the recent *AEP Texas* percentage (2.4 percent), as well as the percentages accepted in *Duke/NS* (2.5 percent) and *CP&L* (2.6 percent). SECI further notes that the mobilization percentage is generous considering that the SFRR, unlike the SARR in the *Duke/CSXT* case, runs through areas where most of the track is readily accessible. Indeed, the SFRR has more than 2,000 road crossings, and there are many nearby rail lines. This SARR also stands in stark contrast to the *WFA/Basin* and *PSCo/Xcel* SARRs, which were more remote and much shorter thereby losing some of the economies of mobilization. In addition, the parties agreed on the 3.5 percent mobilization additive for those SARRs. Furthermore, CSXT's suggestion that *Simplified Standards* set all future mobilization additives in full SAC proceedings is not supported by any precedent in SAC cases. Indeed, the Board decided *AEP Texas* (2.4 percent) five days after its *Simplified Standards* decision was issued. Thus, SECI continues to use the 2.7 percent additive on Rebuttal.

#### **10. Engineering**

The parties agree on the application of a 10 percent engineering additive to the total construction cost, excluding land acquisition costs.



**11. Contingencies**

The parties agree on the application of a 10 percent contingency factor to the total construction cost, excluding land acquisition costs.

**12. Other**

**a. Construction Time Period**

The parties agree on the construction time period.

### **III-G Discounted Cash Flow Analysis**

### **III. G. DISCOUNTED CASH FLOW ANALYSIS**

In its Reply, CSXT levels a number of criticisms at SECI's execution of the Board's DCF methodology, as set forth in Part III-G of SECI's Opening Evidence and accompanying Exhibits. *See* CSXT Reply at III-G-1-10. With the exception of updating the 2008 rail industry cost of capital – which had not been finally resolved when SECI made its Opening submission – CSXT's critiques are misplaced and/or unsupported, and its related adjustments to the DCF model should not be adopted. Each of these is addressed in further detail, below.

#### **1. Cost of Capital**

As CSXT notes, the Board's final decision regarding the 2008 industry cost of capital had not been released when SECI filed its Opening Evidence. *Id.* at III-G-1. Therefore, SECI used the costs as proposed at the time by the AAR. SECI's restatement on Rebuttal incorporates the Board's actual determination for 2008, which was served on September 24, 2009.

The Board has held repeatedly that a SARR stands in the shoes of the defendant railroad as a replacement, not a competitor, and is entitled to take advantage of cost-savings measures and economic strategies employed by the defendant for the SARR's own benefit. *See Major Issues* at 37; *West Texas Utilities* at 670. *See also McCarty Farms* at 472. SECI invoked this rule in its approach to the financing of locomotives that would be purchased by the SFRR. *See* SECI Opening at III-G-5-6.

According to data produced in discovery and publicly available information, in 2007 CSXT issued \$381 million in debt which was secured by its locomotive fleet, and simultaneously acquired new locomotives at a cost of \$340 million. CSXT repeated this finance pattern in 2008, issuing another \$351 million in debt secured by its locomotives, while purchasing another \$351 million in new locomotives. *Id.* at III-G-6 n.6. Based on this evidence, SECI used CSXT's 2007 debt issuance terms to calculate financing costs for the approximately \$321 million in locomotives<sup>1</sup> that would be purchased by the SFRR. SECI Opening at III-G-6-7.

On Reply, CSXT argues that the Board's *PSCo/Xcel* decision rules out any locomotive financing vehicle other than general funds financing based on the railroad industry cost of capital. CSXT Reply at III-G-2-3. CSXT also asserts that asset-specific financing is unnecessary because railroad debt issuances are incorporated in the industry cost of capital, and that SECI has not shown that CSXT's Secured Equipment Notes were used "exclusively" to acquire locomotives. *Id.* at III-G-3. None of these claims is meritorious.

At issue in *PSCo/Xcel* was a claim that certain motor vehicles *could* be acquired by the SARR under financing terms more favorable than the industry cost of capital. The complainant had not included any financing costs in its opening evidence, and only argued for a lower interest rate in response to the defendant's amortization evidence. *PSCo/Xcel* at 655. There was no evidence presented that the defendant ever

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<sup>1</sup> See SECI Opening at III-D-3-4 (177 locomotives purchased at a cost of \$1.813 million each).

actually used the financing method ultimately proposed by the complainant (*id.*), leading the Board to reason that if a party was allowed to speculate that one SARR asset could be acquired at an interest rate lower than the industry cost of capital, the door would be open to an examination of other assets and additional speculation as to higher or lower potential financing costs. *Id.* No such speculation is present in this case; the record shows that in 2007 and 2008 CSXT issued debt secured by locomotives, and purchased new locomotives in amounts equal to or only slightly less than the amounts of the secured debt.<sup>2</sup> In contrast to the complainant in *PSCo/Xcel*, SECI has provided both a rationale and ample evidence to rebut any assumption that the SFRR would have to resort to general funds financed at the industry cost of capital to purchase its locomotives.

The legitimacy of SECI's reliance on the same locomotive purchase financing vehicle that CSXT used (for nearly the same total purchase amounts) is unaffected by the fact that the Secured Equipment Notes were among the cost of debt data assembled by the Board for its 2007 cost of capital determination. CSXT Reply at III-G-3. Many other railroad debt issuances were included as well – including notes with interest rates higher than the CSXT rates.<sup>3</sup> If any bias potential exists here, it is that the

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<sup>2</sup> CSXT argues that because it also purchased \$425 million in freight cars and \$79 million in other equipment in 2007 and 2008, it is speculation to conclude that CSXT used the Secured Equipment Notes for locomotives. CSXT Reply at III-G-3. SECI submits, to the contrary, that the most logical conclusion to be drawn from evidence that a railroad secured \$351 million in new debt with locomotives and then bought \$351 million worth of new locomotives (as CSXT did in 2008), is that the railroad used the debt to buy the locomotives.

<sup>3</sup> See AAR's Opening Evidence workpapers in STB Ex Parte 558 (Sub-No. 11), *Railroad Cost of Capital – 2007*.

SFRR's locomotive capital costs would be *overstated* were the Board to force application of a general industry figure in lieu of the specific cost actually incurred by CSXT in purchasing similar quantities of the very same asset.<sup>4</sup> In its Rebuttal restatement, SECI continues to rely on CSXT's Secured Equipment Notes to determine locomotive capital costs for the SFRR.

Up until September, 2007, the Board consistently rejected efforts by defendant railroads in maximum coal rate cases to add equity flotation costs to the cost of capital. *See PSCo/Xcel* at 659; *TMPA* at 751; *Wisconsin P&L* at 1040. *See also Duke/CSXT* at 433 (improper to add equity flotation costs because CSXT did not incur them, and industry cost of capital calculations already include them). In its decision in *AEP Texas*, however, the Board accepted evidence of flotation costs that was submitted by the complaining shipper. *See AEP Texas* at 108. CSXT now asserts that this represents a new rule of general applicability to all cases. CSXT Reply at III-G-4. SECI submits that CSXT is incorrect, and that there is no basis for the inclusion of such costs in this proceeding.

On the issue of equity flotation costs, *AEP Texas* was factually distinct from this proceeding and prior cases in which the Board consistently excluded those costs. In *AEP Texas*, the complaining shipper proposed that its stand-alone railroad

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<sup>4</sup> CSXT references the Prospectus for the Secured Equipment Notes and the fact that the boilerplate "Use of Proceeds" language addresses potential purposes other than locomotive acquisition. CSXT Reply at III-G-2. Whatever the range of possible uses identified in this standard form, the documentary evidence points clearly to the conclusion that what CSXT actually *did* with almost all of the proceeds of the debt issuances was acquire locomotives.

would refinance 100% of its construction capital shortly after construction was completed. The *shipper* proffered a calculation of equity financing costs based on the ICC's annual cost of capital decision for 1991,<sup>5</sup> the most recent year in which major equity issuances were made by the railroads, to cover the costs associated with the refinancing. See STB Docket No. 41191 (Sub-No.1), *AEP Texas North Company v. BNSF Railway Company*, Rebuttal Evidence of AEP Texas North Company, July 27, 2004 at III-G-3-5. The Board declined to accept the complainant's refinancing scenario, citing unquantified costs "in addition to the flotation fees included in the cost-of-debt calculation that is part of the Board's cost-of-capital determinations...." *AEP Texas* at 106. Without explanation, however, the Board failed to exclude the separate flotation costs that the complainant had proposed as part of its refinancing plan. *Id.* at 108. Solely on the basis of this failure – which SECI respectfully submits was in error – CSXT would include costs that it did not incur in determining the SFRR's cost of capital.

Whether the addition of flotation costs in *AEP Texas* was an oversight or a misinterpretation of the complaining shipper's evidentiary position (*i.e.*, that the costs were tied to the refinancing), it cannot reasonably be construed as overturning years of settled precedent without discussion or comment. As in *Duke/CSXT*, CSXT has made no showing here that it actually incurred flotation costs in any recent time period, or that any flotation fees beyond those already included in the industry cost of capital would be incurred by the SFRR. See *Duke/CSXT* at 433. See also *PSCo/Xcel* at 659. Its proposed flotation adder should be rejected.

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<sup>5</sup> *Railroad Cost of Capital – 1991*, 8 I.C.C. 2d 402 (1992).

## **2. Inflation Indices**

In its Opening Evidence, the annual inflation forecasts used by SECI to calculate the value of the SFRR's road property assets were based on actual railroad chargeout prices and wage rate indexes calculated by the AAR for materials and supplies and wage rates and supplements for eastern railroads. Where actual values were not available, SECI used Global Insight's June 2009 forecast for rail labor and rail materials and supplies. For land assets, SECI based its annual forecast inflation rate on a weighted combination of indices that reflect rural and urban land prices in proportion to the mix of these types of land on the SFRR system routes. Rural land indexes were developed from rural land values reported by the U.S. Department of Agriculture ("USDA"). Urban land values, which consist of a mix of residential and commercial properties, were indexed using a commercial land index prepared by the Massachusetts Institute of Technology Center for Real Estate ("MIT index"), and a residential land index prepared jointly by the Lincoln Institute of Land Policy and the James A. Graaskamp Center for Real Estate at the Wisconsin School of Business ("Lincoln Institute/University of Wisconsin index").<sup>6</sup> SECI's approach to forecast inflation indexing both for land and assets other than land is consistent with Board precedent. *See Duke/NS* at 123; *CP&L* at 261.

In Reply, CSXT accepted SECI's approach to indexing non-land asset values, with three (3) proposed modifications. First, CSXT's Reply DCF model applies different rates of change in the materials and supplies and labor indices than are reflected

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<sup>6</sup> SECI Opening at III-G-7-9.



in the June 2009 Global Insight forecast that SECI used.<sup>7</sup> Since SECI filed its Opening Evidence, Global Insight updated its RCAF and RCR forecasts (as of December 2009). Consistent with precedent, SECI uses Global Insight's updated forecast values in its Rebuttal restatement.

Second, CSXT claims that it updated actual AAR indices where new actual index values had become available. While CSXT did update the materials and supplies and wages and supplements indices for actual 3Q 2009 values, it did not include actual 4Q 2009 values, which were available at the time of CSXT's Reply filing.<sup>8</sup> Subsequently, the AAR published its 1Q 2010 indices in March 2010. SECI has included actual index values through 1Q 2010 in its Rebuttal DCF model.

Third, CSXT extended its inflation forecasts through 4Q2028, even though the Board-prescribed DCF period ends in 2018.<sup>9</sup> As explained in further detail below, the Board in *Major Issues* directed parties using the SAC constraint to utilize a 10-year model, *inter alia*, specifically to avoid developing extended forecasts. On Rebuttal, SECI continues to use a 10-year analysis consistent with the Board's rule.

As noted, SECI based its forecast inflation rate for land on a weighted combination of indices that reflect rural and urban prices in proportion to the mix of land types on the SFRR system. While the Board has a preference for forecasts produced by

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<sup>7</sup> Compare SECI's Opening e-workpaper "Exhibit III-H-1.xlsx," tab "Inflation Index," Columns (5) and (6) to CSXT's Reply WP "Exhibit III-H-1Reply.xlsx," tab "Inflation Index," Columns (5) and (6).

<sup>8</sup> See CSXT Reply e-workpaper "Exhibit III-H-1 Reply.xlsx," tab "Inflation Index," cells M23 and K23. The AAR published its 4Q indexes in December 2009.

<sup>9</sup> CSXT Reply at III-G-4.

impartial third parties, SECI was unable to locate a third party, normal course of business land inflation forecast for use in this case. Instead, SECI used the historical change in rural and urban land values as calculated by impartial third parties as the best evidence available. The use of historic changes in values as a surrogate for future values is the STB's preferred approach where no SARR or industry forecast is available.<sup>10</sup>

In Reply, CSXT levels a number of criticisms at SECI's approach, and advocates instead a made-for-litigation forecast developed by its consultant which, not surprisingly, significantly reduces future land values for the SFRR. In virtually all respects, CSXT's substitute is unsupported and/or flawed, and should be rejected by the Board. With minor adjustment, SECI continues to use its updated Opening forecast in the Rebuttal restatement.

CSXT asserts that there are number of flaws in SECI's development of land inflation values, including (1) that the time-frame used in SECI's historic averages covers a time of unprecedented real estate prices that overstate the index; (2) that SECI truncated its historic averages at 2008 instead of extending them through 2009; and that (3) SECI weighted the composite index by weighting on relative acres along the SFRR's right of way instead of land values. While SECI found that a computational error slightly inflated its Opening land inflation index (an error which it has corrected),<sup>11</sup> CSXT's

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<sup>10</sup> See *McCarty Farms* at 474 ("Because McCarty's projections were based on the historical pattern of traffic that would be carried by the FRR, whereas BN's forecast involved a much broader spectrum of traffic, we use McCarty's [historical] figures....").

<sup>11</sup> SECI's Opening workpaper calculated the average change between 2000 and 2008 for the MIT index but only accounted for the average change between 2007 and 2008 for the Lincoln Institute/University of Wisconsin index. SECI has corrected this

overheated rhetoric about “unprecedented increases” and “strained credulity” is simply that – rhetoric. On the facts, CSXT’s assertions are without merit.

First, CSXT’s claim that SECI’s use of a short-term historic timeframe leads to an overstatement of land inflation ignores Board precedent that *calls for* the use of shorter-term time frames when forecasted values are not available and historic data must be used. For example, in *McCarty Farms* the complainant suggested using a long-term (44 years) average to develop its land inflation factor, but the Board found that such long-term forecasts are inappropriate because they will not necessarily reflect the values of land when the construction of the SARR occurs.<sup>12</sup> Instead of longer historic averages, the STB has adopted shorter averages that extend between five and twenty years.<sup>13</sup> SECI’s use of an eight-year average is completely consistent with Board precedent.

Additionally, the SFRR’s construction period, which includes the time of SFRR’s land acquisition, falls within the historic time period used to develop SECI’s land inflation index. Using an index that excludes the time period encompassing the actual construction of the SFRR would lead to an overstatement in investment expenses. The STB’s DCF model uses the land inflation index to adjust land values during the construction period.<sup>14</sup> Using the historical average rate of inflation allows a proper

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computational error on Rebuttal, and calculates the change over the full analysis period for both indexes.

<sup>12</sup> See *McCarty Farms* at 523-524.

<sup>13</sup> See, e.g., *APS* at 440; *McCarty Farms* at 523.

<sup>14</sup> See SECI Rebuttal e-workpaper “Exhibit III-H-1 Rebuttal.xlsx,” tab “Investment.”

representation of actual land values during the time that the SFRR would acquire land. Using CSXT's unsupported 2.5% inflation factor to deflate 2009 values back to 2007 price levels would overstate the value of the land in 2007, and thus overstate SFRR's investment values. The proper way to account for historic change is to develop a short-term historical index that includes the SARR construction time period.

CSXT's criticism that SECI failed to reflect 2009 values from the USDA Land Values and Cash Rents Summary<sup>15</sup> ignores the fact that while the USDA index may have included these values, the *other two* unbiased, independent indices used by SECI had not published 2009 values as of the time that SECI filed its Opening Evidence. Obviously, it would be methodologically improper to create an unbalanced average index by combining mis-matched years' data. Since August 2009, both MIT and Lincoln Institute/University of Wisconsin have released updated indexes that include 2009 data, which SECI has incorporated into its Rebuttal restatement.<sup>16</sup>

CSXT next claims that SECI improperly weighted the land value indexes based on relative acreage by land type, rather than values.<sup>17</sup> In fact, however, SECI's approach is entirely consistent with precedent. For example, in *AEP Texas* the complainant developed a land inflation index based on weighted land ownership, not values:

The annual inflation forecast that is used to calculate the value of the TNR land assets is based on a weighted combination of indices that reflect rural and urban land prices in relative proportion to the mix of

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<sup>15</sup> CSXT Reply at III-G-5.

<sup>16</sup> See SECI Rebuttal e-workpaper "Updated Corrected Land Appreciation.xlsx."

<sup>17</sup> CSXT Reply at III-G-6.

land types traversed by the TNR. See Exhibit III-H-1.  
This approach likewise was endorsed in *Duke/CSX and Carolina*.<sup>18</sup>

The defendant accepted the complainant's calculations, and consistent with prior cases, the Board endorsed them.<sup>19</sup> CSXT's claim that land indexes should be weighted on values is illogical as well, because the weighting factors implicitly would adjust over time. The land inflation index reflects the expected change in land *values* through the DCF analysis period. Unless the forecasted rate of change in values for all land types is identical, then both the land values and the relative weights, which are based on the values being adjusted, will change over time. The change in land values would change the weighting factors, which in turn would change the land values. This circularity is fatal to CSXT's argument.

In place of SECI's Board-endorsed approach, CSXT offers a made-for-litigation estimate developed by its real estate consultant. CSXT Reply at III-G-6-7. CSXT describes a series of general observations regarding the U.S. economy and references a number of macro-economic statistics compiled by the Congressional Budget Office, President's Council of Economic Advisors, etc. However, at no point does CSXT offer any links between these national statistics and land values for the parcels along the SFRR route. CSXT simply opines that "a prudent investor would not anticipate more

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<sup>18</sup> STB Docket No. 41191 (Sub-No.1), *AEP Texas North Company v. BNSF Railway Company*, Opening Evidence of AEP Texas North Company, March 1, 2004 (Public Version) at III-G-6.

<sup>19</sup> *AEP Texas* at 109.

than an overall 2% to 3% growth rate,”<sup>20</sup> and on that basis proposes a 2.5% inflation factor. Not only is CSXT’s value the product of a made-for-litigation exercise of the type disapproved by the Board in prior cases,<sup>21</sup> but it finds no tangible, evidentiary support in the record. Consistent with established precedent, CSXT’s land index value should be rejected. *See Duke/NS* at 123; *Duke/CSXT* at 432-433; *CP&L* at 261.

### **3. Tax Liability**

CSXT asserts three errors in SECI’s Opening Evidence regarding the calculation of tax liability. First, CSXT claims that SECI misapplied the guidelines applicable to certain bonus depreciation. Next, CSXT argues that SECI used an incorrect tax life for certain assets. Finally, CSXT claims that SECI improperly truncated the calculation of the present value of remaining interest and accelerated depreciation tax benefits. CSXT Reply at III-G-7-8. SECI addresses CSXT’s first two claims at III-H-5-6, *infra*. The third argument is rebutted in the discussion which immediately follows.

### **4. Capital Cost Recovery**

In *Major Issues*, the Board reduced the length of the DCF period from 20 to 10 years. *Major Issues* at 64-66. In taking this action, however, the Board pointedly did *not* change its method for executing the DCF model – only the timing of calculations – and said as much in declining to make modifications advocated by certain shipper parties. *Id.* at 65. Among the features of the model left unchanged was the calculation of terminal value, including the treatment of debt amortization and accelerated depreciation that

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<sup>20</sup> CSXT Reply at III-G-7.

<sup>21</sup> *See TMPA* at 603; *Otter Tail* at B-4; *PSCo/Xcel* at 639.

remained unrealized as of the end of the DCF period. In its Opening Evidence, SECI faithfully executed the Board's model truncated to 10 years, as required by *Major Issues*.

In its Reply, CSXT claims without citation that the Board "recognized" that notwithstanding the shift to a 10-year DCF, capital carrying charges and accelerated depreciation expenses should continue to be accounted for as if the DCF period was still 20 years, and criticizes SECI for not following this non-existent Board "guidance."<sup>22</sup> CSXT Reply at III-G-8-9. CSXT then "restates" the DCF results to increase capital carrying charges for the SFRR by some \$750 million. *Id.* at III-G-10. This gambit should be rejected.

In a footnote, CSXT reveals that its quarrel on this issue is not really with SECI; it is with the Board. CSXT suggests that the DCF model that the Board has been using for the last decade contains a "conceptual error," because it sums the years of amortization and accelerated depreciation still remaining at the end of the DCF period, and deducts this sum from the capitalized revenue stream to determine terminal value. CSXT Reply at III-G-9 n. 5. While CSXT took no exception to this feature of the DCF model when it was executed over a 20 year life,<sup>23</sup> now that the DCF period has been shortened to 10 years CSXT objects to the model's "assumption" that in calculating

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<sup>22</sup> The only portion of the DCF model that the STB maintained as a 20-year analysis is the amortization of debt capital. The Board took this step because debt amortization is a mechanical exercise that relies on calculated investment costs and known debt rates, and does not require the use of speculative long-term forecast. Additionally, the length of the debt amortization period is distinct from the DCF period and instead tied to the assumed term of the debt instruments. *See Major Issues* at 65.

<sup>23</sup> *See Duke/CSXT* at 431.

terminal value, unused tax benefits should be acknowledged and accounted for in the year following the last year of the model. *Id.* at III-G-9. In reality, CSXT is not complaining that SECI departed from the Board’s consistently applied methodology, but rather that SECI *followed* it, and produced an outcome that CSXT doesn’t like.

The Board’s reliance on a multi-year DCF model and its associated method of execution are among the most settled of the “precedent[s] established in prior cases,” that parties have been admonished not to attempt to re-litigate.<sup>24</sup> STB Ex Parte No. 347 (Sub-No. 3), *General Procedures for Presenting Evidence in Stand-Alone Cost Rate Cases*, STB served March 12, 2001 at 6. In *Major Issues*, the Board changed the design of its model by shortening the *de facto* standard time period of 20 years to a formal standard of 10 years. In the process, interested parties were invited to comment on the question of changes to the model, and CSXT did so. In concert with NS, CSXT supported truncating the DCF period to 10 years, and its only proposed modification to the model and methodology would have allowed parties to argue for different time periods in individual cases, a suggestion that the Board rejected. *See Major Issues* at 62-63. Though it attempts to cloak its argument in a different guise,<sup>25</sup> CSXT now advocates

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<sup>24</sup> *See Nevada Power*, 10 I.C.C. 2d at 274-77; *Otter Tail* at EI-E6.

<sup>25</sup> As noted, CSXT claims to have divined “guidance” that when the Board shortened the DCF period to 10 years in *Major Issues*, it intended to exempt the treatment of debt amortization and accelerated depreciation, and continue to apply a 20-year analysis period to these items. This is a fabrication, as is apparent from CSXT’s admission that its real objection to SECI’s calculation of terminal value is its consistency with a Board rule that CSXT would rather see changed. *See CSXT Reply* at III-G-9 n. 5 and III-H-5 (acknowledging that CSXT actually advocates a return to a 20-year DCF...at least for this case).



that the Board make a major change in a settled rule of general applicability, solely for CSXT's benefit in this individual rate case. The Board should decline. *See, e.g., WFA/Basin II* at 4-5 ("BSNF had a full opportunity to participate in [the] rulemaking.... It would defeat the purpose of [the] rulemaking if parties were permitted to advocate for different rules in individual rate cases.")

CSXT includes a single citation to *Major Issues* on which it effectively bases its entire revisionist argument. CSXT Reply at III-G-8. However, CSXT left out the antecedent sentences to its selected quote that clearly show that the referenced issue dealt with how to handle debt amortization, and not the calculation of capital carrying charges:

Coal Shippers also suggest a change to Table E of the DCF model. Table E contains a 20-year amortization schedule of assets purchased with debt capital. Coal Shippers suggest that the involved interest payments be amortized over the life of the asset, rather than the period of the model, regardless of the length of the DCF model. This suggestion, however, is beyond the parameters of this rulemaking, as use of a shorter DCF period does not necessitate the adjustment in how debt is treated, i.e., amortization over the life of the asset versus amortization over the DCF period.<sup>26</sup>

In contrast to CSXT's claim that the Board intended to continue using a 20-year capital carrying charge calculation, *Major Issues* explicitly calls for the use of a 10-year DCF period:

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<sup>26</sup> *Major Issues* at 65.

We believe that a 10-year SAC analysis period strikes the most reasonable balance. It covers an average business cycle but removes unreliable distant forecasts from our core analysis. This is not to suggest that the revenue requirements of a SARR over the 10-year period would need to recover the full capital investment, often billions of dollars, within that 10-year window. *Just as has been done in a 20-year analysis, we would continue to calculate a "terminal value" at the end of the shorter SAC analysis period.*<sup>27</sup>

The terminal value calculation is one of the key components of the DCF analysis, as it is what allows for the continuous recovery of rail investment. If the Board had intended to maintain a 20-year analysis as CSXT claims, it would not have instructed parties to develop a terminal value after only 10 years.

CSXT's claim that the Board intended for a 20-year DCF period also is inconsistent with the agency's stated goals of lessening the impact of long-term forecasts on SAC analyses. As explained in *Major Issues*, the Board adopted a 10-year analysis period in part to lessen the requirement to develop long-term forecasts, which become speculative in the out-years of the analysis.<sup>28</sup> It is completely illogical to assume that the Board meant to continue the development of a 20-year forecast of railroad indexes, while simultaneously stating that it was shortening the analysis period to move away from the requirement of developing long-term forecasts.

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<sup>27</sup> *Major Issues* at 64 (emphasis added).

<sup>28</sup> *Major Issues* at 62.

As noted, CSXT suggests that it is error for the Board to sum remaining tax depreciation beyond the capital recovery period, instead of discounting the remaining benefits to the last period in the DCF analysis. CSXT also asserts that SECI compounded this “error” by executing the model on a 10-year basis and aggregating remaining amortized interest and depreciation without discounting these values.<sup>29</sup> CSXT proposes that any remaining tax depreciation benefits and amortization should be discounted to the final period in the DCF analysis using the railroad industry nominal cost of capital. CSXT’s claims are wrong, based on Board precedent and finance theory.

The discounting of unconsumed depreciation tax benefits was previously rejected in the Board’s 1998 *APS* decision. The defendant railroad in that case raised the same argument made by CSXT here, that future tax benefits should be discounted in the terminal value calculation. The Board rejected this argument, as it would require further speculative forecasting analyses and separate present value calculations:

Santa Fe asserts that we erred by failing to calculate the present value of the unused tax benefits from depreciation that would be available in the post-analysis period. We disagree. If we were to separately discount the stream of annual depreciation allowances in the post-analysis period, which could be used to offset earnings generated after 2013, we would also have to separately project and discount earnings (and annual taxes due on those earnings) that the AGRR would realize in the post-analysis period. However, developing present values for various projected revenue requirements in the post-analysis period would convert our analysis to a perpetual model,

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<sup>29</sup> See CSXT Reply at III-G-9.

which, as we have explained, would be inappropriate.<sup>30</sup>

The Board's logic in *APS* still holds in this case. Discounting unconsumed tax benefits from depreciation and interest amortization would require the development of future earnings and taxes on those earnings. Nothing has changed from the Board's prior rejection of the concept that would warrant a different answer here.

In addition, even if CSXT's idea had merit, which it does not, its execution relies on an incorrect discount rate. CSXT discounted the unused depreciation expenses at the SFRR's composite weighted-average cost of capital.<sup>31</sup> However, a depreciation tax-shield is effectively a risk-free cashflow in that its benefits are set by known tax rates and historic costs. Being risk-free, the proper discount rate to use if one were to discount the tax benefits in the terminal value is the nominal risk-free rate.<sup>32</sup> Using the SFRR nominal cost of capital vastly understates the future tax benefits, which artificially inflates future capital carrying charges.

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<sup>30</sup> *APS* at 82. The "perpetual model" indicated in *APS* differs from the Board's standard DCF model, which is also sometimes referred to as a perpetual or an infinite life model. As explained in *APS* (at 81n. 47), the standard DCF model is a modified perpetual life model that assumes a terminal value after a set period of time. In *APS*, the terminal value was calculated after 20 years. Based on *Major Issues*, the Board now calculates the terminal value after 10 years.

<sup>31</sup> See CSXT Reply e-workpaper "Exhibit III-H-1 Reply.xlsx," worksheet "Tax Depreciation," cell BF127. Because CSXT incorrectly used a 20-year model instead of a 10-year model, it had no amortized interest expense to discount.

<sup>32</sup> See e.g., Stephen A. Ross, Randolph W. Westerfield, and Jeffrey F. Jaffe, "Corporate Finance" Sixth Edition at Chapter 7, and SECI Rebuttal e-workpaper "Net Present Value and Capital Budgeting.ppt."

## **5. PTC Capital Cost**

CSXT includes in its DCF analysis the alleged costs to design and install PTC systems on the SFRR.<sup>33</sup> As explained In Part III-C, *supra*, there is no way to tell at this early stage (before any railroad's PTC compliance plan even has been submitted to the FRA) if CSXT's cost estimates are accurate or reflective of the actual costs to install PTC on the SFRR. SECI therefore has excluded PTC costs from its Rebuttal DCF analysis.

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<sup>33</sup> See CSXT Reply at III-G-10.

### **III-H Results of SAC Analysis**

### **III. H. RESULTS OF SAC ANALYSIS**

#### **1. Results of SAC DCF Analysis**

As discussed in Section III-G, SECI executed the Board's standard DCF model in compliance with *Major Issues*, with two modifications. First, SECI adjusted the model to account for the SFRR's financing of the purchase of locomotives using the same cost of debt incurred by CSXT to acquire locomotives. Second, SECI adjusted the tax depreciation schedule to account for bonus depreciation allowed under current tax laws.

In its Reply, CSXT accepted many of SECI's DCF inputs, including but not limited to 2006 and 2007 costs of capital, non-land inflation indexes, and operating cost indexes. However, CSXT does take issue with certain elements of SECI's Opening DCF model beyond those described in Section III-G. These include the amortization of debt used to acquire locomotives, the application of bonus depreciation to the SFRR assets, and the assignment of depreciation tax lives for certain of the SFRR's property assets. In addition, CSXT made several modifications to the DCF model to account for the installation of PTC equipment, beginning in 2014.

On Rebuttal, SECI has made a limited number of changes to its DCF model in response to points raised by CSXT, which are discussed below. In addition, SECI also explains the numerous errors made by CSXT in its Reply DCF model, including modifications related to PTC on the SFRR.

**a. Cost of Capital**

As discussed at III-G-1, SECI updated the SFRR's 2008 cost of capital to reflect the Board's 2008 Railroad Cost of Capital decision. Also, for the reasons discussed above in Section III-G, SECI continues to utilize CSXT's debt financing costs for locomotives, and rejects the improper inclusion of equity flotation costs as incorporated by CSXT. SECI's updated cost of capital figures are set forth in Table A of SECI's Rebuttal DCF model.<sup>1</sup>

**b. Road Property Investment Values**

The calculation of road property investment costs is summarized in Table C. On Rebuttal, SECI incorporates its updated road property investment values consistent with the adjustments specified in Section III-F.

In its Reply, CSXT accepts SECI's SFRR construction schedule, and its methodology to index annual investment values except for land investment. CSXT claims that there is no need to "discount" land values from 2009 price levels to 2006 price levels using SECI's land inflation index, because CSXT has developed its own land values at 2006 levels.<sup>2</sup>

As discussed in Part III-F-1, and at III-G-8-12, CSXT's land valuation approach is biased and inconsistent with Board precedent, and its

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<sup>1</sup> See SECI Rebuttal e-workpaper "Exhibit III-H-1 Rebuttal.xlsx."

<sup>2</sup> See CSXT Reply at III-H-2. Contrary to CSXT's characterization, SECI did not "discount" its land values from 2009 to 2006, rather, it indexed land values. Discounting is a financial concept that takes into consideration the time value of money given a certain level of risk. Indexing, on the other hand, accounts for general changes in prices. The two terms are not synonymous.



associated final land values therefore are unreliable. On Rebuttal, SECI continues to use its Opening valuation approach, including the indexing of land values to 2006 price levels.

**c. Interest During Construction**

Interest During Construction (“IDC”) accrues on the road property assets of the SFRR. CSXT utilizes the same methodology as SECI’s Opening DCF model to calculate IDC in its Reply DCF, however, it adjusted its worksheet to calculate the IDC accrued during installation of its proposed PTC system. As SECI has explained in at III-C-63-64, there is no basis to impose PTC investment costs on the SFRR, given the still speculative nature of PTC costs and infrastructure. CSXT’s modification of the IDC calculations to account for PTC investment therefore should be rejected.

**d. Amortization Schedule of Assets Purchased With Debt Capital**

Consistent with *Major Issues* and previous Board decisions, SECI’s Opening DCF amortized the debt for road property investment over 20 years. In addition, SECI’s Opening Evidence amortized debt for line-haul locomotive purchases over 15 years, to correspond to the Notes used to acquire these assets.

In Reply, CSXT accepts SECI’s debt amortization approach for road property investment, but contends that locomotives should be amortized over 20-years using the railroad industry cost of debt, in the same fashion as road property

investment. In addition, CSXT developed a separate amortization schedule for future PTC investments.

For the reasons discussed at III-G-1-3, CSXT's challenge to SECI's locomotive acquisition approach should be overruled, and SECI's approach to amortize locomotive debt over 15-years, which is supported by actual evidence of CSXT's locomotive financing practice, should be approved . SECI also excludes amortization on debt used to construct PTC on the SFRR system, for the reasons referenced above.

**e. Present Value Of Replacement Cost**

Table F shows the additional investment (on a present value basis) that the SFRR would have to make if each of its assets (excluding land) was replaced indefinitely at the end of its useful life. In its Opening DCF model, SECI included one worksheet to calculate the future replacement costs of locomotives, and another to develop future replacement costs of all other SFRR assets.<sup>3</sup>

In its Reply, CSXT used a methodology similar to SECI's, but made two modifications to the model. First, CSXT discontinued the use of the separate worksheet to develop replacement costs for locomotives, and added a separate sheet to develop the future replacement cost of CSXT's PTC investment. Again, because SECI's approach to locomotive acquisition financing is sound and well-

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<sup>3</sup> It was necessary to include two replacement calculations given the difference in capital costs used to acquire each set of assets.

supported, and the advent and nature of mandatory PTC equipment is speculative, CSXT's proposed modifications are without merit and should not be accepted.

Second, CSXT modified the tax depreciation schedules to incorporate a 20-year asset life schedule instead of the 15-year asset schedule used in prior Board proceedings. As discussed below, this change is unwarranted and should be rejected.

**f. Tax Depreciation Schedules**

In its Opening DCF model, SECI utilized the same Modified Accelerated Cost Recovery System ("MACRS") depreciation schedules endorsed by the Board in all SAC cases over the prior decade. In addition, SECI's Opening DCF model took advantage of additional or "bonus" depreciation provisions enacted by Congress in 2008 and 2009 as part of federal economic stimulus legislation.

On Rebuttal, SECI has adjusted its bonus depreciation calculations to limit the application to those SFRR assets that were acquired in 2008.<sup>4</sup>

CSXT challenges SECI's assignment of 15-year tax lives to certain assets, arguing instead that they should be treated as 20-year property.<sup>5</sup>

Specifically, CSXT claims that investments in Bridges and Trestles (Account 6), Fences & Roadway Signs (Account 13), Roadway Buildings (Account 17), Fuel

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<sup>4</sup> See CSXT Reply at III-H-4 and SECI Rebuttal e-workpaper "Exhibit III-H-1 Rebuttal.xlsx," tab "Tax Depreciation."

<sup>5</sup> See CSXT Reply at III-H-4 to III-H-5.

Stations (Account 19), Shops and Enginehouses (Account 20) and Public Improvements (Account 39) fall under MACRS 20-year tax life categories. However, the 15-year asset lives used by SECI for these accounts has been used by shippers and railroads, and endorsed by the Board, since the *APS* decision in 1997, and all of the decisions wherein 15 year lives have been approved post-date the IRS Rev. Proc. referenced by CSXT. CSXT Reply at III-H-4. Given the 13-year precedent of using 15-year tax lives and the Board's continued acceptance, SECI uses 15-year tax lives for the selected investment accounts in its Rebuttal DCF model.

Finally, CSXT modified its tax depreciation worksheet to calculate the present value of unconsumed tax depreciation after quarter 80 in its DCF model. As explained in detail at III-G-17-19, CSXT's position was rejected in the 1998 *APS* decision, and is contrary to the 10-year DCF model prescribed in *Major Issues*.

**g. Average Inflation In Asset Prices**

SECI's Opening DCF model calculated weighted-average inflation rates in asset accounts for the 40-quarter period 1Q 2009 to 4Q 2018 consistent with the DCF guidelines contained in the STB's *Major Issues* decision. CSXT accepted SECI's general approach, but erroneously extended the asset inflation forecast for an additional 40 quarters to 4Q 2028. SECI's Rebuttal DCF model continues to rely upon the proper 40-quarter forecasts approach developed and used in its Opening DCF model.

**h. Discounted Cash Flow**

CSXT acknowledges that in key respects, its calculations are based on a 20-year DCF model, contrary to the Board's very clear edict in *Major Issues*. See CSXT Reply at III-H-5. These "adjustments" should be rejected.

The Board likewise should decline to adopt CSXT's suggestion that tax depreciation and debt amortization for years following the end of the DCF period be discounted to the last year of the DCF in calculating terminal value. *Id.* As discussed at III-G-17-19, such a step would work a major change in a long-established Board methodology solely for the benefit of a single litigant, and would fly in the face of the Board's unambiguous rulings in *Major Issues*.

SECI complies with the Board's guidelines and precedents in its Rebuttal restatement.

**i. Computation of Tax Liability – Taxable Income**

SECI's Opening Evidence assumed that the SFRR would be pay federal taxes at the statutory 35 percent tax rate. For state taxes, SECI calculated a composite state income tax rate based on the number of track miles in each state. CSXT accepts SECI's approaches for developing Federal and state income tax rates in its Reply, however it expands its Federal and state income tax calculations to 80-quarters. As expansion of the tax calculations is improper in the Board's now-standard 40-quarter DCF model, SECI continues to calculate taxes over 40 quarters.

**j. Operating Expenses**

Table K displays the operating expenses incurred in each year of the DCF period. In Opening, SECI detailed the changes it made to the Board's DCF model to adjust annual operating expenses by the prospective change in ton-miles rather than the change in tons, in order to better reflect changes in the traffic mix.<sup>6</sup> In Reply, CSXT accepted the change in approach to adjusting annual operating expenses using ton-miles in the place of tons.<sup>7</sup>

CSXT also modified its Reply operating expense worksheet to add trackage-rights fees paid by the SFRR to the EVWR for the transport of issue traffic. As explained at III-D-149-150, the addition of trackage rights fees for the issue traffic is a double-count of costs as the SFRR pays the EVRR a division for transporting the SGS coal. CSXT's worksheet modification is incorrect.

**k. Summary of SAC**

SECI presented its summary of total SAC in its Opening Narrative at Table L of Exhibit III-H-1. In Reply, CSXT has modified Table L to exclude the investment that the SFRR made for the purchase of locomotives, and include investment costs for the installation of PTC systems on the SFRR. As discussed in at III-G-1-4, it is entirely appropriate to base the SFRR's locomotive acquisitions

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<sup>6</sup> See SECI Opening at III-H-7 to III-H-8.

<sup>7</sup> See CSXT Reply at III-H-6.

on the same least cost method available and used by CSXT, and entirely inappropriate to include investment dollars for PTC when both the need for and nature of such investment remains speculative.

**2. Maximum Rate Calculations**

SECI has used the MMM as required under the Board's *Major Issues* decision to bring SAC and stand-alone revenues into equilibrium. CSXT incorrectly concluded that total SAC in each year exceeded SFRR revenues, so it did not develop SAC R/VC ratios using MMM. CSXT did, however, prepare a Reply MMM model in which it states it made several "modifications" to SECI's Opening MMM.<sup>8</sup> SECI discusses these modifications below.

**a. URCS Index**

CSXT claims that SECI improperly used the STB's URCS index to adjust 2008 variable costs instead of the RCAF-A. CSXT Reply at III-H-7. As SECI explained in its Opening Narrative at III-H-11, in *WFA/Basin II* the Board directed the use of the RCAF-A to adjust variable costs in the MMM model. However, the Board subsequently determined that the standard URCS indexing approach would produce the most accurate results in developing future variable costs for rate prescription purposes, and directed its use. *See OG&E at 11*. As obviously it would be inappropriate to use two (2) different indices to accomplish

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<sup>8</sup> See CSXT Reply at III-H-7. In addition to the changes discussed at pages III-H-7 and III-H-8 of its Reply CSXT made several unnecessary cosmetic changes to SECI's MMM model, as listed in the "Modifications" worksheet of CSXT's Reply e-workpaper "SFRR MMM Model Reply.xlsx."

the same, singular purpose, SECI is relying on the Board's more recent precedent, and using the Board's URCS indexing procedure to forecast variable costs for the MMM calculation.

The use of a forecasted CSXT-specific URCS index also is better suited to the goals of the MMM approach than the application of the more general RCAF-A index. The STB indicated in *WFA/Basin II* that it is the accurate presentation of the defendant railroad's variable costs which is key to the MMM's ability to maintain differential pricing required by the defendant carrier:

In sum, for MMM to correctly calculate the degree of differential pricing needed by the defendant railroad to recover the total SAC costs over the DCF analysis period, we need to properly forecast the defendant carrier's variable costs.<sup>9</sup>

If the key is developing accurate estimates of the defendant carrier's future variable costs, using a carrier-specific URCS index provides a more accurate approach than application of the industry-wide RCAF-A. An URCS index takes into consideration the specific weighting of cost components unique to a specific railroad, while the RCAF-A bases its cost weighting on cost inputs from all Class I railroads. The most accurate way to calculate a defendant carrier's future variable costs is to use an index specific to that carrier.<sup>10</sup>

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<sup>9</sup> *WFA/Basin II* at 30.

<sup>10</sup> SECI has updated its CSXT URCS index forecast in its Rebuttal restatement to incorporate actual AAR indexes through 2009, updated labor,



**b. Updated Traffic, Revenues and Routings**

CSXT states that it updated the tons, revenues and variable costs for each movement based on its Reply adjustments.<sup>11</sup> As discussed in detail in Section III-A, the vast majority of those adjustments are unsupported by the evidence and/or inconsistent with Board precedent and core SAC principles. In its Rebuttal restatement, SECI has updated its traffic and revenue figures based on its revised calculations discussed in Section III-A.

**c. 2008 URCS Variable Costs**

SECI's Opening MMM model included variable costs developed using a 2008 CSXT URCS developed by SECI because the Board had not yet issued its final 2008 URCS at the time of SECI's filing. The Board subsequently issued its final 2008 CSXT URCS Phase III model, which CSXT used in its Reply MMM model. On Rebuttal, SECI also has updated the variable costs in its MMM model to reflect the Board's final 2008 CSXT URCS.

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material and supplies and fuel changes from Global Insight's December 2009 forecast, and actual 2009 PPI-All Commodity values.

<sup>11</sup> See CSXT Reply at III-H-8.

### 3. Maximum Reasonable Rates

The SAC analysis summarized in Parts III-A through III-G and the accompanying Exhibits, and displayed in Rebuttal Exhibit III-H-1 demonstrates that over the 10-year DCF period the revenues generated by the SFRR exceed its total capital and operating costs. Table III-H-1 below shows the measure of excess revenue over SAC in each year of the DCF period for this case.

<b>Table III-H-1</b>					
<b><u>Summary of DCF Results – 2009 to 2018</u></b>					
<b>(\$ in millions)</b>					
<b><u>Year</u></b>	<b><u>Annual Stand-Alone Requirement</u></b>	<b><u>Stand-Alone Revenues</u></b>	<b><u>Overpayments or Shortfalls</u></b>	<b><u>PV Difference</u></b>	<b><u>Cumulative PV Difference</u></b>
<b><u>(1)</u></b>	<b><u>(2)</u></b>	<b><u>(3)</u></b>	<b><u>(4)</u></b>	<b><u>(5)</u></b>	<b><u>(6)</u></b>
2009	\$836.2	\$1,048.0	\$211.8	\$201.0	\$201.0
2010	882.1	1,182.2	300.1	256.5	457.5
2011	925.4	1,259.3	333.9	257.0	714.6
2012	970.6	1,350.0	379.3	263.0	977.6
2013	1,011.5	1,458.9	447.4	279.4	1,257.0
2014	1,050.5	1,531.3	480.8	270.4	1,527.4
2015	1,092.0	1,607.1	515.1	261.0	1,788.4
2016	1,132.6	1,689.5	556.9	254.1	2,042.5
2017	1,174.1	1,776.2	602.1	247.4	2,289.9
2018	1,215.7	1,874.6	658.9	243.9	2,533.8

Where, as in this case, stand-alone revenues are shown to exceed costs, rates for the members of the SFRR traffic group -- including SECI in particular -- must be adjusted to bring revenues and SAC into equilibrium. In *Major Issues*, the Board adopted MMM as its rate prescription approach for use in proceedings under the *Coal Rate Guidelines*. See *Major Issues* at 14-23.

Application of MMM yields the following maximum r/vc ratios for each year of the DCF model.

<b>Table III-H-2</b>	
<b><u>Rebuttal MMM Results</u></b>	
<b><u>Year</u></b>	<b><u>Maximum R/VC</u></b>
2009	158.2%
2010	151.3%
2011	148.8%
2012	145.1%
2013	142.5%
2014	141.9%
2015	141.2%
2016	139.9%
2017	138.6%
2018	136.5%

Source: Rebuttal Exhibit III-H-2.

As indicated in Table III-H-2, the maximum r/vc ranges from 136.4% to 158.2% over the 10-year DCF period. As applied to the unadjusted Phase III URCS variable costs for the issue movements, the following maximum reasonable rates apply to shipments in SECI-supplied railcars and CSXT-supplied railcars, respectively, at 1Q09 and 4Q09 wage and price levels.

**Table III-H-3**  
**SECI MMM Rates Per Ton – 1Q09 to 4Q09**

<b><u>Origin</u></b> <b>(1)</b>	<b><u>1Q09</u></b>		<b><u>2Q09</u></b>		<b><u>3Q09</u></b>		<b><u>4Q09</u></b>	
	<b><u>SECI</u></b> <b><u>Cars</u></b> <b>(2)</b>	<b><u>CSXT</u></b> <b><u>Cars</u></b> <b>(3)</b>	<b><u>SECI</u></b> <b><u>Cars</u></b> <b>(4)</b>	<b><u>CSXT</u></b> <b><u>Cars</u></b> <b>(5)</b>	<b><u>SECI</u></b> <b><u>Cars</u></b> <b>(6)</b>	<b><u>CSXT</u></b> <b><u>Cars</u></b> <b>(7)</b>	<b><u>SECI</u></b> <b><u>Cars</u></b> <b>(8)</b>	<b><u>CSXT</u></b> <b><u>Cars</u></b> <b>(9)</b>
1. Dotiki, KY	\$18.01	\$18.89	\$18.02	\$18.91	\$18.43	\$19.35	\$18.67	\$19.59
2. Pattiki, IL	\$19.33	\$20.28	\$19.35	\$20.28	\$19.79	\$20.76	\$20.05	\$21.03
3. Warrior, KY	\$17.66	\$18.53	\$17.67	\$18.54	\$18.08	\$18.97	\$18.31	\$19.21
4. Elk Creek, KY	\$17.64	\$18.51	\$17.66	\$18.53	\$18.07	\$18.95	\$18.29	\$19.19
5. Gibcoal, IN	\$19.11	\$20.03	\$19.11	\$20.05	\$19.57	\$20.52	\$19.81	\$20.77
6. Consol 95, WV	\$23.34	\$24.43	\$23.35	\$24.44	\$23.91	\$25.01	\$24.21	\$25.33
7. Bailey Mine, PA	\$24.86	\$26.00	\$24.87	\$26.01	\$25.44	\$26.61	\$25.77	\$26.96
8. Charleston, SC (coal)	\$7.25	\$7.72	\$7.25	\$7.74	\$7.42	\$7.91	\$7.52	\$8.01
9. Charleston, SC (petcoke)	\$7.26	\$7.74	\$7.26	\$7.75	\$7.44	\$7.93	\$7.53	\$8.04

The maximum lawful rates for the transportation of coal from the origins covered by Tariff CSXT-32531 to SGS equal the greater of the jurisdictional threshold or the MMM maximum rates. Tables III-H-4 and III-H-5 compare CSXT's rates at 4Q09 (in SECI-supplied and CSXT-supplied railcars) to the jurisdictional threshold and the MMM maximum. The issue rates are greater than both the jurisdictional threshold and the MMM rates for all origins.

**Table III-H-4**  
**Maximum Rate Summary – 4Q09**  
**SECI-Supplied Railcars**

<b><u>Origin</u></b>	<b><u>Jurisdictional Threshold Per Ton</u></b>	<b><u>MMM Rate Per Ton</u></b>	<b><u>Maximum Rate Per Ton <sup>1/</sup></u></b>
(1)	(2)	(3)	(4)
1. Dotiki, KY	\$21.24	\$18.67	\$21.24
2. Pattiki, IL (Epworth)	\$22.81	\$20.05	\$22.81
3. Warrior, KY (Cardinal 9)	\$20.83	\$18.31	\$20.83
4. Elk Creek, KY (Cimarron)	\$20.81	\$18.29	\$20.81
5. Gibcoal, IN	\$22.54	\$19.81	\$22.54
6. Consol 95, WV	\$27.54	\$24.21	\$27.54
7. Bailey Mine, PA	\$29.32	\$25.77	\$29.32
8. Charleston, SC (coal)	\$8.55	\$7.52	\$8.55
9. Charleston, SC (Pet Coke)	\$8.57	\$7.53	\$8.57

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<sup>1/</sup> Greater of Column (2) or Column (3).

**Table III-H-5**  
**Maximum Rate Summary -- 4Q09**  
**CSXT-Supplied Railcars**

<b><u>Origin</u></b>	<b><u>Jurisdictional Threshold Per Ton</u></b>	<b><u>MMM Rate Per Ton</u></b>	<b><u>Maximum Rate Per Ton <sup>1/</sup></u></b>
(1)	(2)	(3)	(4)
1. Dotiki, KY	\$22.28	\$19.59	\$22.28
2. Pattiki, IL (Epworth)	\$23.92	\$21.03	\$23.92
3. Warrior, KY (Cardinal 9)	\$21.85	\$19.21	\$21.85
4. Elk Creek, KY (Cimarron)	\$21.83	\$19.19	\$21.83
5. Gibcoal, IN	\$23.63	\$20.77	\$23.63
6. Consol 95, WV	\$28.82	\$25.33	\$28.82
7. Bailey Mine, PA	\$30.67	\$26.96	\$30.67
8. Charleston, SC (coal)	\$9.11	\$8.01	\$9.11
9. Charleston, SC (Pet Coke)	\$9.14	\$8.04	\$9.14

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<sup>1/</sup> Greater of Column (2) or Column (3).

**Witness Qualifications  
and Verifications**

## **PART IV**

### **WITNESS QUALIFICATIONS AND VERIFICATIONS**

This Part contains the Statements of Qualifications and Verifications of the witnesses who are responsible for the Narrative portions of SECI's Rebuttal Evidence (and the exhibits and workpapers referred to therein), identified with respect to each witness.

**1.     MICHAEL P. OPALINSKI**

Mr. Opalinski is SECI's Senior Vice President of Strategic Services, with offices located at 16313 North Dale Mabry Hwy, Tampa, Florida, 33618. He has occupied this position for two years and ten months, and has been in SECI's employ for over thirty years. Mr. Opalinski is sponsoring factual statements in Part I and portions of Part II-B of SECI's rebuttal evidence.

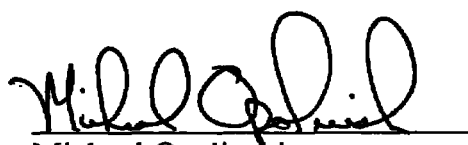
As Senior Vice President of Strategic Services for SECI, Mr. Opalinski directs the activities of the Fuel Supply Department, the Department of Strategic Planning and Legislative Affairs, and the Environmental Affairs Group. The Fuel Supply Department is responsible for the supply and transportation of coal and natural gas for SECI's generating facilities, as well as natural gas for third party generating facilities providing electric energy to SECI via power purchase agreements. The Department of Strategic Planning and Legislative Affairs is responsible for the development of renewable energy, energy efficiency projects, and state and federal legislative activities. The Environmental Affairs Group is responsible for the permitting of new projects. It is



also tasked with ensuring regulatory compliance of SECI's operating generation and transmission facilities.

**VERIFICATION**

I, Michael P. Opalinski verify under penalty of perjury that I have read the rebuttal evidence of Seminole Electric Cooperative, Inc. in this proceeding that I have sponsored, as described in the foregoing Statement of Qualifications, that I know the contents thereof, and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.

  
Michael Opalinski

Executed on April 12, 2010

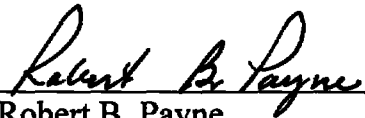
**2.     ROBERT BRUCE PAYNE**

Mr. Payne is SECI's Manager of Operations for the Seminole Generating Station with offices at 890 North Hwy. 17, Palatka, Florida, 32177. He has occupied this position for two and a half years. Mr. Payne is sponsoring the photographs included in Part II-B of SECI's rebuttal evidence.

As the Manager of Operations at SGS, Mr. Payne's responsibilities include managing and overseeing the plant's Power Block (the boiler, turbine, and generator), its coal yard, its various support systems (*i.e.*, the FGD-flue gas desulphurization units and the effluent processing facility) and its chemistry labs. Mr. Payne oversees approximately 120 employees in these departments. As the Manager of Operations, he is charged with ensuring SGS's availability and maintaining its operational efficiency and cost control. He must also ensure safe operations and guarantee compliance with required environmental limits.

**VERIFICATION**

I, Robert B. Payne, verify under penalty of perjury that I have read the rebuttal evidence of Seminole Electric Cooperative, Inc. in this proceeding that I have sponsored, as described in the foregoing Statement of Qualifications, that I know the contents thereof, and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.

  
Robert B. Payne

Executed on April 7, 2010

### **3. HAMILTON S. "BUCK" OVEN**

Mr. Oven is a licensed Professional Engineer with offices at 3212 Brookforest Drive, Tallahassee, Florida, 32312-2003. He is sponsoring portions of Part II-B of SECI's rebuttal evidence.

For over 30 years (from 1973, until 2007), Mr. Oven worked as the Administrator of the Siting Coordination Office for the Florida Department of Pollution Control, Florida Department of Environmental Regulation and the Florida Department of Environmental Protection. His position classifications were Professional Engineer IV, Professional Engineer Administrator, and Program Administrator. In these positions, Mr. Oven directed a one-stop environmental licensing program for steam-electric power plants subject to the Florida Electrical Power Plant Siting Act and for large transmission lines subject to the Florida Transmission Line Siting Act. He also advised county property appraisers of the eligibility of pollution control devices for ad valorem tax relief.

Prior to working for the State of Florida, Mr. Oven worked as a General Engineer for the U.S. Federal Power Commission (1968-69); he was an Air Pollution Control Engineer for the City of Jacksonville (1969-71); he worked as a Water Pollution Control Engineer for the City of Jacksonville (1971); he was a Bio-Environmental Engineer, with the title of Director of Air and Water Pollution Control, in Jacksonville, Florida (1971-73); and he worked as the Deputy Executive Director for the Florida Department of Pollution Control (1973-74).

Mr. Oven received his Bachelor's degree in Civil Engineering (Sanitary Engineering) from the University of Florida in 1964 and his Master's degree in Environmental Engineering (Air Pollution Control) from the same institution in 1968. He has also taken short courses in various related fields, including Field Enforcement Techniques (EPA); Air Pollution Control Techniques (EPA); Flue Gas Desulfurization Methods (EPA); Visible Emissions Evaluation (Florida Department of Pollution Control); Hazardous Waste Disposal (Florida State University); and Biological Effects of Electromagnetic Fields (Bioelectromagnetic Society).

**VERIFICATION**

I, Hamilton S. Oven, verify under penalty of perjury that I have read the rebuttal evidence of Seminole Electric Cooperative, Inc. in this proceeding that I have sponsored, as described in the foregoing Statement of Qualifications, that I know the contents thereof, and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.

Hamilton S. Oven  
Hamilton S. Oven, P.E.

Executed on April 9<sup>th</sup>, 2010

**4. JAMES N. HELLER**

Mr. Heller is the founder and president of Hellerworx, Inc. with offices at 4803 Falstone Avenue, Chevy Chase, Maryland, 20815. Hellerworx provides strategic and economic consulting services to electric generators, coal and energy producers, and transportation companies. Mr. Heller is sponsoring portions of Part II-B of SECI's rebuttal evidence.

Mr. Heller founded his consulting firm, Hellerworx, Inc. in August 2002. Hellerworx assists power generators, transportation companies, and energy producers in solving economic and technical problems related to energy and transportation markets and environmental compliance issues. Mr. Heller is an expert in coal, energy, environmental and transportation issues. His specialties include coal market analysis, transportation market analysis, electric utility planning, electric power market analysis, analysis of environmental compliance options, utility fuel procurement, energy property valuation, and litigation support.

Prior to founding Hellerworx, Mr. Heller worked for Hagler Bailly as Senior Vice President from 1998 to 2000. In this capacity, Mr. Heller served as head of Hagler Bailly's fuels and environment practice area and as an expert in coal, energy, and transportation issues. His activities supported the firm's forecasting and analysis of electric power, fuel and transportation markets and various clean air compliance issues. PA Consulting bought Hagler Bailly in 2000 and Mr. Heller stayed on as a Senior Partner. In that position, Mr. Heller worked on launching the Environmental Resource Analytics Practice within PA Consulting. PA Consulting provided strategic and



analytical services to clients in the electric generation, coal and transportation markets; performed various studies and modeling activities related to compliance with environmental regulations; and conducted environmental risk assessments.

In 1981, Mr. Heller founded the Fieldston Company, Inc. and Fieldston Publications, Inc. He worked at the Fieldston Companies as their founder and president until 1998 when he sold the Companies. The Fieldston Companies provided energy and transportation consulting services to the energy supply, transportation and electric utility sectors. Its 60+ person staff provided expert assistance to the fuels supply, transportation and electric generation industries in hundreds of commercial matters. The publication staff developed and published leading business periodicals in the coal, rail transportation and environmental fields.

In 1979, Mr. Heller took a position as Senior Analyst for Teknekron, Inc. of Berkeley, California . As Senior Analyst, Mr. Heller was responsible for strategic planning, market analyses, rail merger studies, transportation market analysis and rate estimation, plant siting, and public policy development.

Before his position at Teknekron, Mr. Heller worked for Energy and Environmental Analysis, Inc. as their Director of Management Studies from 1975 to 1979. While occupying this position, Mr. Heller directed coal market and transportation studies for railroads and coal producers; conducted economic evaluation of air and water regulations; and developed energy efficiency plans for clients such as the U.S Department of Energy, the Executive Office of the President, the US Presidential

Commission on Coal, the US Congress Office of Technology Assessment, and various coal producers.

Previously, Mr. Heller also worked as a Section Chief for the Office of Water Quality Planning and Standards at the U.S. Environmental Protection Agency. In that capacity, he developed and promulgated industrial water pollution control guidelines.

Mr. Heller is a 1970 graduate of Northwestern University, where he received his B.S. in Electrical Engineering. He is also an 1972 graduate of Harvard University, where he received his MBA. Additionally, Mr. Heller is a member of the engineering honor societies Eta Kappa Nu and tau Beta Pi. He is also the author of *Coal Transportation and Deregulation: An Impact Analysis of the Staggers Act*, Serif Press and the Energy Bureau, 1984, and the co-author of *Coal Profitability: An Investor's Guide*, McGraw-Hill, 1979.

**VERIFICATION**

I, James N. Heller, verify under penalty of perjury that I have read the rebuttal evidence of Seminole Electric Cooperative, Inc. in this proceeding that I have sponsored, as described in the foregoing Statement of Qualifications, that I know the contents thereof, and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.

A handwritten signature in cursive script, appearing to read "James N. Heller", written in dark ink.

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James N. Heller

Executed on April 14, 2010

## **5. RICK BAKER**

Mr. Baker is the Executive Director of the Bulk Terminals Group, LLC (BTG). BTG is a group of professional companies and personnel providing design, operations, construction, consulting and terminaling services. Mr. Baker's business address is 94 Cayman Cove Destin, FL 32541. He is sponsoring portions of SECI's rebuttal evidence relating to market dominance and the potential use of waterborne transportation to deliver coal to the Seminole Generating Station without CSXT's involvement (Part II) and is the principal author of Exhibit II-B-1.

Mr. Baker has been the Executive Director of BTG since 2000. In that time, he developed BTG into an all-inclusive firm that consults clients on dry bulk material handling through every stage of their projects, from concept through development. Mr. Baker is responsible for facility conceptual designs, material handling specifications, equipment selection, facility operations, facility management, and start-up and troubleshooting of dry bulk material handling facilities, which handle metallurgical, bituminous and sub-bituminous coal among other materials.

From 1998 until 2000, Mr. Baker served as Vice President and General Manager of Aimcor, in Texas City, Texas. As VP and GM, Mr. Baker was responsible for multiple petroleum coke processing and terminal facility operations. He also oversaw logistics and business development for the U.S. Gulf Coast, Caribbean, and South America. Among his achievements at Aimcor, Mr. Baker developed the first Mississippi River Aimcor terminal, despite numerous obstacles and a history of failed in-house

attempts. He also analyzed petcoke handling facilities and made retrofit modifications to various petcoke facilities within several Gulf Coast refineries.

Before his position at Aimcor, Mr. Baker worked as a Plant Manager, Equity Partner and Vice President with the IC Railmarine Terminal Company in Convent, Louisiana. He was with IC Railmarine from 1996 until 1998. During this time, he conceived, financed, developed, designed, built, and operated an \$80 million-dollar multi-product port facility along the Lower Mississippi river. He also dealt with numerous political, legislative, environmental, and civic organizations to realize the terminal. During his time with IC Railmarine, Mr. Baker also established an aggregate handling yard for Martin Marietta and Vulcan materials.

From 1987 to 1996, Mr. Baker worked as a Plant Manager for the Alabama State Docks at the McDuffie Coal Terminal and at the Bulk Material Handling Plant ("BMP"), in Mobile, Alabama. In this capacity, Mr. Baker took over a dry bulk handling terminal operation in extreme financial difficulty and turned it into a significantly profitable enterprise within 18 months. To achieve this, Mr. Baker restructured facility operations, administration, marketing, business development, sales, construction, purchasing, budgeting, safety, scheduling, and staffing. BMP, is now the largest coal importing terminal in the country.

Mr. Baker worked for International Marine Terminals in Port Sulphur, Louisiana from 1984 to 1987. He was the Operations Superintendent from 1984 to 1985 and the Plant Engineer from 1985 to 1987. He was responsible for capital expenditures,

modifications, and expansions to a \$120 million coal and bulk material marine terminal transfer facility on the lower Mississippi River.

Mr. Baker has also undertaken various positions as an engineering consultant. For example, he authored the preventative maintenance procedures for Integrated Logistics Support of the Strategic Petroleum Reserve; he supervised a hydrofluoric acid unit turnaround in Murphy Oil Corp.'s Chalmette Refinery; and he provided technical data for the proposal to modify a power generating plant in New York to increase its productive life expectancy by twenty years. Mr. Baker also worked for Exxon U.S.A. based out of New Orleans, LA, as a Mechanical Surveillance Engineer and a Facility Surveillance Engineer.

Mr. Baker is a 1981 graduate of Vanderbilt University, where he received his B.E. in mechanical engineering.

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**VERIFICATION**

I, Rick Baker, verify under penalty of perjury that I have read the rebuttal evidence of Seminole Electric Cooperative, Inc. in this proceeding that I have sponsored, as described in the foregoing Statement of Qualifications, that I know the contents thereof, and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.

  
\_\_\_\_\_  
Rick Baker

Executed on April 12, 2010

**6. GARY V. HUNTER**

Mr. Hunter is Chairman and Chief Executive Officer of Railroad Industries Incorporated ("Railroad Industries), a full-service transportation and rail consulting firm that assists a wide variety of railroad and other clients with planning and development projects involving all aspects of management and operations. His business address is located at 1575 Delucchi Lane #210, Reno, Nevada, 89502. Together with Messrs. Reistrup and Kruzich, Mr. Hunter is sponsoring the portions of Part III-D of SECI's rebuttal evidence that relate to the SARR's general and administrative ("G&A") personnel.

Mr. Hunter founded Railroad Industries in 1983. Since that time he has conducted branch line analyses and equipment utilization analyses; developed operating plans; conducted market development, transportation costing, and intermodal analyses; engaged in merger studies; developed short line railroads; and performed financial analyses for various railroad clients.

Prior to founding Railroad Industries, Mr. Hunter was employed by the Arkansas Midland Railroad. He served as Arkansas Midland's General Manager from 1993 to 1994. As General Manager, Mr. Hunter was responsible for the short line's overall operation, including its 131 miles of track, 37 employees, and 21,000 annual carloads. Numerous departments, such as the maintenance of way, maintenance of equipment, operations, marketing and agency departments (essentially all departments involved in performing general & administrative functions), reported to Mr. Hunter.



Additionally, Mr. Hunter was responsible for all purchasing activities and real estate transactions.

Prior to joining the Arkansas Midland, Mr. Hunter was a consultant for Transportation Marketing Services, Inc. from 1987 to 1989. As a consultant, Mr. Hunter was responsible for achieving the firm's revenue and profit objectives, as directed by the President. His duties included market development, strategic planning, equipment analysis, physical distribution analysis, branch line acquisition analysis, competitive analysis, market research, contract rate negotiations, sales development, operations analysis, financial analysis, and business plan development. Additionally, Mr. Hunter prepared testimony, traffic and revenue projections diversion estimates, and traffic flow analyses for the Anschutz Corp. and Rio Grande Industries in their acquisition of the Southern Pacific Transportation Company ("SP"). He also assisted Philip Anschutz in developing the staffing plan (both operating and G&A) for the combined SP and Denver & Rio Grande Western systems after their merger.

From 1981 to 1987, Mr. Hunter worked in the SP's Marketing Service Department, Intermodal Department, and Market Planning Department. In the Marketing Services Department, Mr. Hunter was responsible for achieving revenue and profit objectives as directed by the Assistant Vice President – Marketing Services. He developed agreements with other railroads; cultivated a network of short-haul TOFC trains; and evaluated the competitive environment and implications for the corporation. In the Intermodal Department, Mr. Hunter was responsible for special studies on all

aspects of domestic and international TOFC and container traffic as directed by the Assistant Vice President – Intermodal. He engaged in contract development and negotiations, cost development and analysis; and market and pricing development and analysis. In the Market Planning Department, Mr. Hunter was responsible for the market development and pricing of the aggregate and cement commodities. His duties included forecasting and analyzing product markets aimed at expanding market share, reducing operating costs, and increasing profit margin. Additional responsibilities included contract negotiations, cost analysis and development, and equipment allocation and acquisition decisions. Mr. Hunter also became Group Manager of marketing programs, in which capacity he was responsible for special projects, feasibility studies, merger work, branch line analysis, and worked closely with the marketing organization.

In 1976, Mr. Hunter joined the Western Pacific Railroad's Transportation Department where he worked until 1981. Jobs included Assistant Trainmaster and Trainmaster, and he also was the Operating Department's Budget Officer. His responsibilities at Western Pacific included projecting and monitoring an annual system operating budget of \$70 million; conducting in-depth analyses of operating expenses; coordinating with line managers to determine individual terminal and districts with overall system forecasts; presenting budget variances to the Vice President – Operations; and providing guidelines and requirements for programming departmental reports.

Mr. Hunter received his Bachelor of Arts degree in Business, Transportation, and Real Estate from San Francisco State University in 1976. He

received his M.B.A. from San Francisco State in 1979 and was selected as M.B.A.  
“Alumnus of the Year” in 1980.

**VERIFICATION**

I, Gary V. Hunter, verify under penalty of perjury that I have read the Rebuttal Evidence of Seminole Electric Cooperative, Inc. in this proceeding that I have co-sponsored, as described in the foregoing Statement of Qualifications, that I know the contents thereof, and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.

  
\_\_\_\_\_  
Gary V. Hunter

Executed on April 06, 2010

### VERIFICATION

I, Paul H. Reistrup, verify under penalty of perjury that I am the same Paul H. Reistrup whose Statement of Qualifications appears in Part IV of the Narrative portion of SECI's Opening Evidence in this proceeding; that I am cosponsoring the portions of SECI's Rebuttal Evidence that relate to the SARR system, operating plan and operating expenses (Parts III-B, III-C, and III-D) except for equipment lease costs, information technology expenses, train crew counts, and compensation for Operating and General & Administrative personnel presented in Part III-D (these items are sponsored by SECI Witness Philip Burris); that I know the contents thereof; and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.

  
Paul H. Reistrup

Executed on: April 13, 2010

## VERIFICATION

I, Walter H. Schuchmann verify under penalty of perjury that I am the same Walter H. Schuchmann whose Statement of Qualifications appears in Part IV of the Narrative portion of SECI's Opening Evidence in this proceeding; that I am cosponsoring the portion of SECI's Rebuttal Evidence related to the configuration and capacity of the SARR system (Parts III-B and III-C) and the development of certain peak-year service units/operating statistics used in developing the SARR's annual operating expenses shown in Part III-D in this proceeding; that I know the contents thereof; and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.

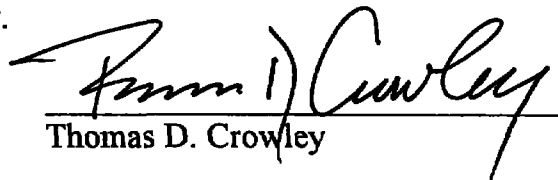
A handwritten signature in black ink, appearing to read "Walter H. Schuchmann", written over a horizontal line.

Walter H. Schuchmann

Executed on: April 7, 2010

## VERIFICATION

I, Thomas D. Crowley, verify under penalty of perjury that I am the same Thomas D. Crowley whose Statement of Qualifications appears in Part IV of the Narrative portion of SECI's Opening Evidence in this proceeding; that I am co-sponsoring the portions of the Rebuttal Evidence that relate to quantitative market dominance (Part II-A-1 and 2); qualitative market dominance (Part II-B-3); the SARR traffic group, including volumes and revenues (Part III-A-1, 2 and 3); the identification of the SARR peak traffic period and peak period train counts and development of the peak year traffic density by line segment and identification of movements in railroad-owned cars (Part III-C-2); the non-road property investment (Part III-E); the discounted cash flow (Part III-G); the results of the SAC analysis (Part III-H); Rebuttal Exhibit I-1; and that, together with Messrs. Reistrup and Schuchmann, I am co-sponsoring the description of CSXT data problems, the differences between SECI's operating plan and CSXT's operating plan, and the additional costs resulting from RTC model testing of sample movements involving intermediate or yard/local switching (Part III-C-1); that I know the contents thereof; and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.

  
Thomas D. Crowley

Executed on: April 13, 2010

## VERIFICATION

I, Michael E. Lillis, verify under penalty of perjury that I am the same Michael E. Lillis whose Statement of Qualifications appears in Part IV of the Narrative portion of SECI's Opening Evidence in this proceeding; that, together with SECI Witness Thomas D. Crowley, I am co-sponsoring the portions of the Rebuttal Evidence that relate to coal traffic (Parts III-A-2 and 3); that I know the contents thereof; and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.

  
Michael E. Lillis

Executed on: April 13, 2010



## VERIFICATION

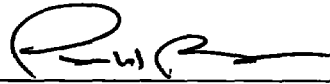
I, Robert D. Mulholland, verify under penalty of perjury that I am the same Robert D. Mulholland whose Statement of Qualifications appears in Part IV of the Narrative portion of SECI's Opening Evidence in this proceeding; that, together with SECI Witness Thomas D. Crowley, I am co-sponsoring the portions of the Rebuttal Evidence that relate to general freight and intermodal traffic (Parts III-A-2 and 3); that I know the contents thereof; and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.

  
Robert D. Mulholland

Executed on: April 13, 2010

## VERIFICATION

I, Philip H. Burris, verify under penalty of perjury that I am the same Philip H. Burris whose Statement of Qualifications appears in Part IV of the Narrative portion of SECI's Opening Evidence in this proceeding; that I am sponsoring the portions of SECI's rebuttal evidence that relate to the development of operating statistics based on the output of the RTC model and the operating plan, including the development of train crew personnel requirements (Part III-D), the development of equipment lease, maintenance and servicing costs (Parts III-D-1 and III-D-2), the operating unit costs (Parts III-D-3 and III-D-5 through III-D-9) and the compensation levels for all the SARR transportation and operating (including engineering) employees, nonoperating (General and Administrative) personnel, and the training and recruiting costs (Parts III-D-2, III-D-3-d, and III-D-4); the development of the acres of land acquired by the SARR via easements and the value of those easements (Part III-F-1); and the application of the SARR operating unit costs to the operating statistics, thus yielding the SARR operating expenses in the base year and the development of the land value index for use in the DCF model (Part III-G-2); that I know the contents thereof; and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.



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Philip H. Burris

Executed on: April 13, 2010

## VERIFICATION


I, Joseph A. Kruzich, verify under penalty of perjury that I am the same Joseph A. Kruzich whose Statement of Qualifications appears in Part IV of the Narrative portion of SECI's Opening Evidence in this proceeding; that I am sponsoring the portions of SECI's rebuttal evidence that relate to the SARR's information technology capital (hardware) and personnel requirements and other expenses for the SARR (Part III-D-3-c); that I know the contents thereof; and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.

  
Joseph A. Kruzich

Executed on: April 7, 2010

## VERIFICATION

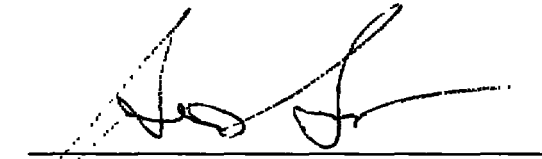
I, Harvey A. Crouch, verify under penalty of perjury that I am the same Harvey A. Crouch whose Statement of Qualifications appears in Part IV of the Narrative portion of SECI's Opening Evidence in this proceeding; that I am sponsoring the portions of SECI's rebuttal evidence that relate to the SARR maintenance-of-way-plan and annual expenses (Part III-D-4); and the portion of Part III-F that relates to the SARR's construction costs, other than the costs for the SARR's signal and communications system which are being sponsored by SECI Witness Victor Grappone; that I know the contents thereof; and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.

  
Harvey A. Crouch

Executed on: April 8<sup>th</sup>, 2010

## VERIFICATION

I, Stuart I. Smith, verify under penalty of perjury that I am the same Stuart I. Smith whose Statement of Qualifications appears in Part IV of the Narrative portion of SECI's Opening Evidence in this proceeding; that I am sponsoring the portions of the Rebuttal Evidence that relate to the appraisal and determination of unit-land values for the right-of-way for the SARR (Part III-F-1); that I know the contents thereof; and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.

  
\_\_\_\_\_  
Stuart I. Smith

Executed on: April 2, 2010

## VERIFICATION

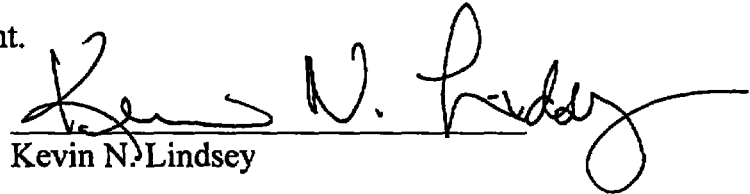
I, Charles A. Stedman, verify under penalty of perjury that I am the same Charles A. Stedman whose Statement of Qualifications appears in Part IV of the Narrative portion of SECI's Opening Evidence in this proceeding; that I am sponsoring the portions of SECI's rebuttal evidence that relate to the development of SARR route miles (Part III-B-1-d); and that, together with SECI Witness Harvey A. Crouch, I am co-sponsoring the portions of SECI's rebuttal evidence that relate to the roadbed preparation/earthworks component of the road property investment cost of the SARR, exclusive of culverts, roadbed specifications and yard drainage (Part III-F-2); that I know the contents thereof; and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.

  
Charles A. Stedman

Executed on: April 13, 2010

## VERIFICATION

I, Kevin N. Lindsey, verify under penalty of perjury that I am the same Kevin N. Lindsey whose Statement of Qualifications appears in Part IV of the Narrative portion of SECI's Opening Evidence in this proceeding; that I am sponsoring the portions of SECI's rebuttal evidence that relate to bridge designs and costs (Part III-F-5); that I know the contents thereof; and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.

  
Kevin N. Lindsey

Executed on: April 8<sup>th</sup>, 2010

## VERIFICATION

I, Victor F. Grappone, verify under penalty of perjury that I am the same Victor F. Grappone whose Statement of Qualifications appears in Part IV of the Narrative portion of SECI's Opening Evidence in this proceeding; that, together with SECI Witness Paul Reistrup, I am co-sponsoring the portions of SECI's Rebuttal Evidence that relate to the SARR's signal and communications systems (Parts III-B-4-b and c and III-F-6); and that, together with SECI Witness Harvey Crouch, I am co-sponsoring the portion of the SARR maintenance-of-way plan relating to Communications & Signals Department personnel (Part III-D-4-b-ii); that I know the contents thereof; and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.

  
\_\_\_\_\_  
Victor F. Grappone

Executed on: April 13, 2010



## VERIFICATION

I, Daniel L. Fapp, verify under penalty of perjury that I am the same Daniel L. Fapp whose Statement of Qualifications appears in Part IV of the Narrative portion of SECI's Opening Evidence in this proceeding; that, together with SECI Witness Thomas D. Crowley, I am co-sponsoring the portions of SECI's Rebuttal Evidence that relate to discounted cash flow analysis (Part III-G) and the results of the SAC analysis (Part III-H); that I know the contents thereof; and that the same are true and correct. Further, I certify that I am qualified and authorized to file this statement.

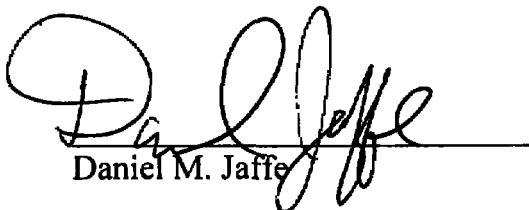
  
Daniel L. Fapp

Executed on: April 13, 2010

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of April, 2010, I caused copies of SECI's Rebuttal Evidence, including the Narrative, Exhibits and electronic workpapers, to be served by hand-delivery on counsel for Defendant CSX Transportation, Inc., as follows:

G. Paul Moates, Esq.  
Paul A. Hemmersbaugh, Esq.  
Matthew Warren, Esq.  
Sidley & Austin LLP  
1201 K Street, N.W.  
Washington, D.C. 20005

  
Daniel M. Jaffe